No. 3186

United States Circuit Court of Appeals

For the Ninth Circuit

HULET M. WELLS, SAM SADLER,
MORRIS PASS and JOE PASS,
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court for the Western District of Washington, Northern Division

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Equity Printing Co. Seattle, Wash.

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INDEX OF PRINTED TRANSCRIPT OF RECORD

Page

Assignment of Errors 166
Arraignment and Plea, Each Defendant 18
Bill of Exceptions 28
Bond—Joseph Pass 210
Bond—Morris Pass 206
Bond—Sam Sadler 203
Bond—Hulet M. Wells 199
Certificate of Clerk, U. S. District Court to Transcript of Record 218
Charge of Court to Jury 114
Citation 222
Defendants' Requested Instructions 98
Empanelment of July 19
Hearing in re Settlement Bill of Exceptions 27
Indictment 2
Names and Addresses of Counsel 1
Order Allowing Writ of Error 213
Order Directing Transmission of Original Exhibits to Appellate Court 215
Order Extending November Term 25
Order Extending Term and Permitting Filing of Bill of Exceptions 26
Order Settling Bill of Exceptions 162
Petition for Writ of Error 164
Proposed Amendments to Defendants' Proposed Bill of Exceptions 139
Sentence, Joe Pass 23
Sentence, Morris Pass 22
Sentence, Sam Sadler 21
Sentence, Hulet M. Wells 20
Stipulation as to Record 216

TESTIMONY ON BEHALF OF PLAINTIFF:

- Barney, J. F. 41
- Duncan, James A. 37
  - Cross-examination 39
- Flynn, William N. 44
- Foster, Thomas B. 41
- Fraser, C. J. 45
- Fraser, Mrs. C. J. 46
- Friermood, J. E. 30
  - Cross-examination 32
  - Redirect Examination 33
  - Recross-examination 33

Page
Greene, Frank B. 42
Cross-examination 43
Cross-examination 43
Redirect Examination 44
Rebuttal 94
Cross-examination 94
Lavine, David 34
Cross-examination 35
Listman, George P. 30
Mitchell, Dubois 46
Pass, Sarah 41
Reid, George C. 42
Royse, Arthur 46
Saunders, William R. 30
Smith, Nell R. 28
Welty, G. M. 35
Cross-examination 36
Testimony on Behalf of Defendants:
Berg, Lewis 90
Levine, David 89
Parks, Clarence L. 89
Cross-examination 89
Pass, Helen Barr 90
Pass, Joe 80
Cross-examination 83
Pass, Morris 71
Cross-examination 73
Redirect Examination 78
Recross-examination 80
Sadler, Sam 85
Cross-examination 87
Strong, Anna Louise 66
Cross-examination 70
Redirect Examination 70
Wells, Hulet M. 48
Cross-examination 59
Redirect Examination 64
Recalled 64
Wells, Nesta 91
Cross-examination 92
Verdict 20
Writ of Error 220

United States District Court, Western District of Washington, Northern Division.

No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, et al.,

Defendants.

Names and Addresses of Counsel.

WINTER S. MARTIN, Esq.,
Attorney for Plaintiffs in Error,
704 New York Building, Seattle, Washington.

WILSON R. GAY, Esq.,
Attorney for Plaintiffs in Error,
810 Alaska Building, Seattle, Washington.

ROBERT C. SAUNDERS, Esq.,
Attorney for Defendant in Error,
310 Federal Building, Seattle, Washington.

BEN L. MOORE, Esq.,
Attorney for Defendant in Error,
310 Federal Building, Seattle, Washington.

United States District Court, Western District of Washington, Northern Division.

May Term, 1917.

No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, SAM SADLER, MORRIS PASS, and JOE PASS,

Defendants.

Indictment.

The United States of America,
Western District of Washington,
Northern Division.—ss.

The grand jurors of the United States of America, duly selected, impaneled, sworn and charged to inquire within and for the Northern Division of the Western District of Washington, upon their oaths present:

COUNT I.

That Hulet M. Wells, Sam Sadler, Morris Pass and Joseph Pass, at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, on the twenty-fifth day of April, A. D. One Thousand Nine Hun-

dred and Seventeen, did wickedly, maliciously, corruptly, wilfully, knowingly, unlawfully and feloniously combine, conspire, confederate and agree together, and one with another, and together and with divers and sundry other persons whose names are to the grand jurors unknown, to oppose by force the authority of the United States, and by force to prevent, hinder and delay the execution of a law of the United States, that is to say, that the said mentioned Hulet M. Wells, Sam Sadler, Morris Pass and Joseph Pass, hereinafter referred to as "Defendants," did wilfully, knowingly, unlawfully and feloniously combine, conspire, confederate and agree together and with divers and sundry other persons to the grand jurors unknown, by force to prevent, hinder and delay the execution of the joint resolution of Congress of the United States made and approved on the sixth day of April, A. D. One Thousand Nine Hundred and Seventeen, then and there declaring a state of war to exist between the United States and the Imperial German Government, and directing and authorizing the President of the United States to employ the entire military and naval forces of the United States and the resources of the government to carry on war against the Imperial German Government; and to then and there oppose by force the authority of the United States and the authority of the President of the United States in carrying into force and effect the

provisions of the laws then existing which related to the armed military and naval forces of the United States; and to then and there by force prevent, hinder and delay the execution of such acts of Congress enacted after the adoption of said resolution declaring war between the United States and the Imperial German Government, hereinabove referred to, for the purpose of carrying into execution the plan and purpose of said resolution, it then and there being the purpose and intention of the said defendants, and each of them, together with such other persons as they might, or could, induce, incite and encourage to co-operate with them in their plan, and to join their said conspiracy to oppose by force the authority of the United States, and to prevent, hinder and delay the execution of the said joint resolution of Congress declaring war hereinabove referred to, together with such other laws as then existed or as might thereafter be enacted in pursuance of said joint resolution of Congress declaring war; and it then and there was the further purpose, plan and object of the said defendants, and each of them, to prevent by force the proper organization of armed military and naval forces of the United States, and the proper disposition of said force under and by virtue of the authorities of the United States in conducting said war so declared and resolved for by the said Congress of the United States.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That after the formation of the said unlawful conspiracy and in pursuance of and to effect the object thereof, the said Hulet M. Wells, at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, on the tenth day of May, A. D. One Thousand Nine Hundred and Seventeen, did wilfully, knowingly, unlawfully and feloniously engage, direct, order, employ and hire the Trade Printery, which was then and there a printing establishment in the City of Seattle, a more particular description thereof being to the grand jurors unknown, to print and cause to be printed many copies, the exact number of which is to the grand jurors unknown, of a certain circular, pamphlet, print and leaflet, hereinafter referred to as the "No-Conscription Circular," and which said circular is in words and figures as follows, to-wit:

NO CONSCRIPTION

NO INVOLUNTARY SERVITUDE

NO SLAVERY.

"Neither Slavery, nor INVOLUNTARY SERVITUDE, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the Unitel States or any place subject to their jurisdiction."

The above is a part of the organic Constitution

of the United States. The President and Congress have no authority to set it aside. That can only be done by a majority vote of the Legislature of three-fourths of the separate states. For the President and Congress to do it, is to usurp the powers of autocrats and if unresisted means the abandonment of democracy and the destruction of the Republic.

We, signing this, are native born citizens, within the age limit set for the first compulsory draft. They will make an army of us and send us to compel you to enter the second draft, and some more of you to enter the third draft and so on until freedom is dead. Wake up! Stand by us now, for when we have become an army we will have ceased to think and we will shoot you if told to shoot you! Just so it is expected that we will shoot and kill our brothers in other lands, and that we will die to restore the rapidly vanishing values to the investments of Wall Street bankers escaping service themselves—a plutocracy whose good fortunes we do not share, but for which we have suffered enough.

Resist! Refuse! Don't yield the first step toward conscription. Better to be imprisoned than to renounce your freedom of conscience. Let the financiers do their own collecting. Seek out those who are subject to the first draft! Tell them that we are refusing to register or to be conscripted and to stand with us like men and say to the mas-

ters: "Thou shalt not Prussianize America!"

We are less concerned with the autocracy that is abroad and remote than that which is immediate, imminent and at home. If we are to fight autocracy, the place to begin is where we first encounter it. If we are to break anybody's chains, we must first break our own, in the forging. If we must fight and die, it is better that we do it upon soil that is dear to us, against our masters, than for them where foreign shores will drink our blood. Better mutiny, defiance and death of brave men with the light of the morning upon our brows, than the ignominy of slaves and death with the mark of Cain, and our hands spattered with the blood of those we have no reason to hate.

SEATTLE BRANCH NO CONSCRIPTION LEAGUE, P. O. Box 225.

"Where is it written in the constitution—that you may take the children from their parents—and compel them to fight the battles of Any War in which the folly or the wickedness of the government may engage?"

(Union Label.)

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That after the formation of the said unlawful conspiracy and in pursuance of and to effect the objects thereof, the said Hulet M. Wells did on the tenth day of

May, A. D. One Thousand Nine Hundred and Seventeen, at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, wilfully, knowingly, unlawfully and feloniously read, correct, approve and "OK" the said printed circular hereinabove referred to.

And the grand jurors aforesaid, upon their oats aforesaid, do further present: That after the formation of the said unlawful conspiracy and in pursuance of and to effect the object thereof, the said Hulet M. Wells on the twenty-third day of May, A. D. One Thousand Nine Hundred and Seventeen, at Seattle, within the Northern Division of the Western District of Washington and within the jurisdiction of this court, did wilfully, knowingly, unlawfully and feloniously introduce a resolution at a meeting in the Labor Temple of said City of Seattle on the evening of said day, which said resolution was of the following language and tenor, to-wit:

"WHEREAS, the U. S. Government, over the repeated and emphatic protests of organized labor, is attempting to conscript men for service in a foreign war, and powerful forces are at work to fill the places of such conscripted citizens with coolie labor; and

"WHEREAS, there are among our people many classes of conscientious objectors, including

those who oppose all war, those who oppose all international wars except to repel invasion, those who believe that this enforced slaughter of our young men is not based upon a worthy cause, those who do not believe in abandoning all American traditions by sending an invading army overseas, those who have religious scruples, and those whose ties of blood and birth would compel them to either resist conscription or to crush with fratricidal brutality the best impulses of the human heart; and

"WHEREAS, the co-operation of the organized workers, especially in mechanical, shipbuilding and transportation industries is essential to the prosecution of the war; and

"WHEREAS, no injury to our country could result from the conclusion of an immediate peace,

"THEREFORE, it is apparent that the organized workers have it in their power to stop the war, and if it is to be continued we demand of the Government, (1st) exemption from military service of all those who have conscientious objections to the war, and (2d) that there shall be absolutely no relaxation of the present restrictions on Oriental immigration."

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That after the formation of the said unlawful conspiracy and in pursuance of an to effect the object thereof, the said Hulet M. Wells, Sam Sadler, and other per-

sons to the grand jurors unknown, on the eleventh day of May, A. D. One Thousand Nine Hundred and Seventeen, in a room in the Epler Block, in the City of Seattle, King County, Washington, in said division and district, and within the jurisdiction of this court, did wilfully, knowingly, unlawfully and feloniously distribute and cause to be distributed said "No Conscription" circular, the terms of which said print, pamphlet and circular are hereinabove described and set forth, and are by allegation made a part of this overt act, to and among numerous persons to the grand jurors unknown; contrary to the form of the statute in such cases made and provided and against the peace and dignity of the United States of America.

COUNT II.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present:

That Hulet M. Wells, Sam Sadler, Morris Pass and Joseph Pass, hereinafter referred to as defendants, at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, on the twenty-fifth day of April, One Thousand Nine Hundred and Seventeen, did wickedly, maliciously, corruptly, wilfully, knowingly, unlawfully and feloniously combine, conspire, confederate and agree together and one with the other, and together and with divers and sundry other persons whose names are to the grand jurors

unknown, by force to prevent, hinder and delay the execution of certain laws of the United States, to-wit: (1) the Joint Resolution of the Senate and House of Representatives, dated April 6, 1917, "That the state of war between the United States and the Imperial German Government which has been thrust upon the United States is hereby formally declared," and thereby authorizing and directing the President to use and employ all of the military and naval forces of the United States, and all the resources of the Government thereof in the prosecution of said war; (2) the Act of Congress approved June 3, 1916, and entitled "An Act for Making Further and More Effectual Provision for the National Defense, and for other purposes," special reference being had to Sections 57, 59 and 111 of said Act; and (3) Section 4 of the Act of Congress approved January 21, 1903, entitled "An Act to promote the efficience of the Military and for other purposes," as amended by Section 3 of the Act of Congress approved May 27, 1908, entitled "An Act to further amend the Act entitled, 'An Act to promote the efficiency of the Militia, and for other purposes,' approved January 21, 1903," it then and there being the purpose and intention of the said defendants and each of them, together with such other persons as they might, or could induce, incite and encourage to co-operate with them in their plan, and to join their said conspiracy, by force to

prevent, hinder and delay the duly authorized officers, agents and representatives of the United States from putting into effect and executing the said laws hereinabove mentioned and from calling forth and bringing into the military service of the United States, persons subject and liable to service thereunder, under the provisions of said laws and to prevent, hinder and delay by force the mobilization, organization, control, direction and disposition of the armed military and naval forces of the United States in conducting said war against the Imperial German Government.

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That after the formation of the said unlawful conspiracy and in pursuance of and to effect the object thereof, the said Hulet M. Wells, at Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this court, on the tenth day of May, A. D. One Thousand Nine Hundred and Seventeen, did wilfully, knowingly, unlawfully and feloniously engage, direct, order, employ and hire the Trade Printery, which was then and there a printing establishment in the City of Seattle, a more particular description thereof being to the grand jurors unknown, to print and cause to be printed many copies, the exact number of which is to the grand jurors unknown, of a certain circular, pamphlet, print and leaflet, hereinafter re-

ferred to as the "No Conscription" circular, and which said circular is in words and figures as follows, to-wit:

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NO INVOLUNTARY SERVITUDE
NO SLAVERY

"Neither Slavery, nor INVOLUNTARY SERVITUDE, except as punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

The above is a part of the organic Constitution of the United States. The President and Congress have no authority to set it aside. That can only be done by a majority vote of the Legislatures of three-fourths of the separate states. For the President and Congress to do it, is to usurp the powers of autocrats and if unresisted means the abandonment of democracy and the destruction of the Republic.

We, signing this, are native born citizens, within the age limit set for the first compulsory draft. They will make an army of us and send us to compel you to enter the second draft, and some more of you to enter the third draft and so on until freedom is dead. Wake up! Stand by us now, for when we have become an army we will have ceased to think and we will shoot you if told to shoot you! Just so it is expected that we will shoot and kill our brothers in other lands and that we will

die to restore the rapidly vanishing values to the investments of Wall Street bankers escaping service themselves—a plutocracy whose good fortunes we do not share, but for which we have suffered enough.

Resist! Refuse! Don't yield the first step toward conscription. Better to be imprisoned than to renounce your freedom of conscience. Let the financiers do their own collecting. Seek out those who are subject to the first draft! Tell them that we are refusing to register or to be conscripted and to stand with us like men and say to the masters: "Thou shalt not Prussianize America!"

We are less concerned with the autocracy that is abroad and remote than that which is immediate, imminent and at home. If we are to fight autocracy, the place to begin is where we first encounter it. If we are to break anybody's chains, we must first break our own, in the forging. If we must fight and die, it is better that we do it upon soil that is dear to us, against our masters, than for them where foreign shores will drink our blood. Better mutiny, defiance and death of brave men with the light of the morning upon our brows, than the ignominy of slaves and death with the mark of Cain, and our hands spattered with the blood of those we have no reason to hate.

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(Union Label.)

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And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That after the formation of the said unlawful conspiracy and in pursuance of and to effect the object thereof, the said Hulet M. Wells on the twenty-third day of May, A. D. One Thousand Nine Hundred and Seventeen, at Seattle, within the Northern Division of the Western District of Washington and within the jurisdiction of this court, did wilfully, knowingly, unlawfully and feloniously introduce a resolution at a meeting in the Labor Temple of

said City of Seattle on the evening of said day, which said resolution was of the following language and tenor, to-wit:

"WHEREAS, The U. S. Government, over the repeated and emphatic protests of organized labor, is attempting to conscript men for service in a foreign war, and powerful forces are at work to fill the places of such conscripted citizens with coolie labor; and

"WHEREAS, That there are among our people many classes of conscientious objectors, including those who oppose all war, those who oppose all international wars except to repel invasion, those who believe that this enforced slaughter of our young men is not based upon a worthy cause, those who do not believe in abandoning all American traditions by sending an invading army overseas, those who have religious scruples, and those whose ties of blood and birth would compel those to either resist conscription or to crush with fratricidal brutality the best impulses of the human heart; and

"WHEREAS, The co-operation of the organized workers, especially in mechanical shipbuilding and transportation industries is essential to the prosecution of the war; and

"WHEREAS, No injury to our country could result from the conclusion of an immediate peace,

"THEREFORE, It is apparent that the organized workers have it in their power to stop the

war, and if it is to be continued we demand of the Government, (1st) exemption from military service of all those who have conscientious objections to the war, and (2nd) that there shall be absolutely no relaxation of the present restrictions on Oriental immigration."

And the grand jurors aforesaid, upon their oaths aforesaid, do further present: That after the formation of the said unlawful conspiracy and in pursuance of and to effect the object thereof, the said Hulet M. Wells, Sam Sadler, and other persons to the grand jurors unknown, on the eleventh day of May, A. D., One Thousand Nine Hundred and Seventeen, in a room in the Epler Block, in the City of Seattle, King County, Washington, in said division and district, and within the jurisdiction of this court, aid wilfully, knowingly, unlawfully and feloniously distribute and cause to be distributed said "No Conscription" circular, the terms of which said print, pamphlet and circular are hereinabove described and set forth, and are by allegation made a part of this overt act, to and among numerous persons to the grand jurors unknown; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

CLAY ALLEN,
United States Attorney.

BEN L. MOORE,
Assistant United States Attorney.

Indorsed: Indictment for vio. Sec. 37 P. C. to vio. Act of Apr. 6, 1917, Act of June 3, 1916, and Act of Jan. 21, 1903, as amended. A True Bill. F. C. Harper, Foreman Grand Jury. Presented to the Court by the Foreman of the Grand Jury in open Court, in the presence of the Grand Jury, and filed in the U. S. District Court, Oct. 31, 1917, Frank L. Crosby, Clerk. By S. E. Leitch, Deputy.

No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, SAM SADLER, et al.,

Defendants.

Arraignment and Plea.

Hulet M. Wells, Sam Sadler, Morris Pass, Joseph Pass,

Now on this 26th day of November, 1917, the above named Defendants come into open Court for arraignment, counsel not being present, and here and now answer to their names as given. The indictment is read to them and they enter pleas of not guilty to the charge in the indictment herein against them. Defendants' bail is fixed and they are allowed to go on bail in cause No. 3671, until bail is fixed. At 2:00 P. M. defendants Morris Pass and Joe Pass appear in open Court, counsel not present, and each enters his plea of not guilty to the charge in the indictment herein against him.

Journal 6, page 314.

No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, et al.,

Defendants.

Trial.

Now on this 19th day of February, 1918, this cause comes on for trial in open Court, the Plaintiff being represented by C. L. Reames, Special Assistant Attorney General, and Ben L. Moore, Assistant U. S. Attorney, and the defendants present in their own proper persons and represented by W. R. Bell and Jacob Kalina. Whereupon both sides being ready the following persons are examined and qualify as petit jurors, as follows: A. A. Keenan, Carl Jorgenson, Walter S. Milnor, I. Cooper, W. F. Howe, F. L. Bartlett, Fred Lyke, John E. Meldal, W. A. Hannan, Wm. McPhearson, Dana Brown and C. N. Valentine, twelve good and lawful men duly empaneled and sworn. The Court orders that the jury as empaneled and sworn be kept together in charge of Bailiff and not allowed to separate during the trial and that Marshal provide meals and lodging. Opening statement of plaintiff is made to the jury. Witnesses Mrs. Nell R. Smith, Wm. R. Saunders and Geo. B. Lisman are sworn and examined on behalf of the Plaintiff and exhibits 1 to 5 admitted. The jury is cautioned and retire in charge of bailiffs and excused until

10:00 A. M. tomorrow. Bailiffs E. R. Tobey and J. Luckenbel are sworn in charge of jury.

Journal 6, page 373.

In the District Court of the United States for the Western District of Washington.

No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, SAM SADLER, MORRIS PASS and JOSEPH PASS,

Defendants.

Verdict.

We, the jury in the above entitled cause, find

Defendant Hulet M. Wells is guilty.

Defendant Sam Sadler is guilty.

Defendant Morris Pass is guilty.

Defendant Joseph Pass is guilty.

WALTER S. MILNOR, Foreman.

Indorsed: Verdict. Filed in the U. S. District Court, Western Dist. of Washington, Feb. 21, 1918. Frank L. Crosby, Clerk. By S. E. Leitch, Deputy.

No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, et al.,

Defendants.

Sentence—Hulet M. Wells.

Comes now on this 18th day of March, 1918,

the defendant Hulet M. Wells into open Court for sentence and being informed by the Court of the Indictment herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, he nothing says save as before he hath said. Wherefore, by reason of the law and the premises, it is considered, ordered and adjudged by the Court that the defendant is guilty of the crime of violation of Sec. 37 P. C. to vio. Act Apr. 6, 1917, Act June 3, 1916, and Act Jan. 21, 1903, and that he be punished by being confined in the United States Penitentiary at McNeil Island, Washington, or in such other prison as may hereafter be provided for persons convicted of offenses against the law of the United States, for the period of two years or until he shall be otherwise discharged by law, whereupon defendant is hereby remanded into the custody of the United States Marshal to carry this sentence into execution.

Judgment and Decree Book No. 2, page 232.

No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, et al.,

Defendants.

Sentence—Sam Sadler.

Comes now on this 18th day of March, 1918, the

defendant Sam Sadler into open Court for sentence, and being informed by the Court of the indictment herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, he nothing says save as before he hath said. Wherefore by reason of the law and the premises, it is considered, ordered and adjudged by the Court that the defendant Sam Sadler is guilty of the crime of violation of Sec. 37 P. C. to violate Act April 6, 1917, Act June 3, 1916, and Act. Jan. 21, 1903, and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Washington, or in such other place as shall be hereafter provided for the confinement of persons convicted of offense against the laws of the United States, for the period of two years, or until he shall be otherwise discharged by law, whereupon defendant is hereby remanded into the custody of the United States Marshal, to carry this sentence into execution.

Judgment and Decree Book No. 2, page 232.

No. 3797.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HULET M. WELLS, et al.,
Defendants.

Sentence—Morris Pass.

Comes now on this 18th day of March, 1918, the

defendant Morris Pass into open Court for sentence, and being informed by the Court of the indictment herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, he nothing says save as before he hath said. Wherefore by reason of the law and the premises, it is considered, ordered and adjudged by the Court that the defendant Morris Pass is guilty of the crime of violation of Sec. 37 P. C. to violate Act April 6, 1917, Act June 3, 1916, and Act. Jan. 21, 1903, and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Washington, or in such other place as shall be hereafter provided for the confinement of persons convicted of offense against the laws of the United States, for the period of two years, or until he shall be otherwise discharged by law, whereupon defendant is hereby remanded into the custody of the United States Marshal, to carry this sentence into execution.

Judgment and Decree Book No. 2, page 233.

No. 3797.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
HULET M. WELLS, et al.,
Defendants.

Sentence—Joseph Pass.

Comes now on this 18th day of March, 1918, the

defendant Joseph Pass into open Court for sentence, and being informed by the Court of the indictment herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him, he nothing says save as before he hath said. Wherefore by reason of the law and the premises, it is considered, ordered and adjudged by the Court that the defendant Joseph Pass is guilty of the crime of violation of Sec. 37 P. C. to violate Act April 6, 1917, Act June 3, 1916, and Act Jan. 21, 1903, and that he be punished by being imprisoned in the United States Penitentiary at McNeil Island, Washington, or in such other place as shall be hereafter provided for the confinement of persons convicted of offense against the laws of the United States, for the period of two years, or until he shall be otherwise discharged by law, whereupon defendant is hereby remanded into the custody of the United States Marshal, to carry this sentence into execution.

Judgment and Decree Book 2, page 233.

United States District Court, Western District of Washington, Northern Division.

No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, SAM SADLER, MORRIS PASS and JOSEPH PASS,

Defendants.

Order Extending November Term.

This cause coming on to be heard upon the application of counsel for the Defendants hereto for an order in the above entitled cause extending the November term of the above entitled Court and it appearing that said application should be granted;

IT IS ORDERED AND DECREED that the 1917 November term of the above entitled Court holden in the Northern Division of said district be and the same hereby is extended in the above entitled cause from and after its expiration on Monday, May 8th, 1918, to and including the 5th day of June, 1918, for the purpose of settling, allowing and filing defendants' Bill of Exceptions in said entitled cause, which has heretofore been prepared and served on plaintiff.

AND IT IS FURTHER ORDERED that the time in which the Bill of Exceptions may be settled, allowed and filed under the rules of the said Court is hereby extended to conform to the time extending

the November term of said Court.

DONE IN OPEN COURT this 6th day of May, 1918.

JEREMIAH NETERER,
United States District Judge.

O. K.—WILSON R. GAY and
WINTER S. MARTIN,
Attys. for Defts.

Indorsed: Order Extending November Term. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, May 6, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

United States District Court, Western District of Washington, Northern Division.

No. 3797.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HULET M. WELLS, SAM SADLER,
MORRIS PASS and JOSEPH PASS,
Defendants.

Order Extending Term and Permitting Filing of Bill of Exceptions.

This cause coming on to be heard upon the application of the attorneys for the defendants in the above entitled cause for an order for the further extension of the November term 1917 of the above entitled court, in order to permit settling and filing bill of exceptions in said cause and it appearing to the court that said order should be entered, it is by

the court ORDERED AND DECREED that the 1917 November term of the above entitled court holden in the Northern Division of said District be and the same hereby is further extended in the above entitled cause from and after the 5th day of June, 1918, to and including the 17th day of June, 1918, for the purpose of settling, allowing and filing defendants' bill of exceptions in said entitled cause; and

IT IS FURTHER ORDERED that the time in which the bill of exceptions may be settled, allowed and filed under the rules of said court is hereby extended to conform to the further extension of the term time as herein named.

Done in Open Court this 3rd day of June, 1918.

JEREMIAH NETERER,
U. S. District Judge.

Indorsed: Order Extending Term and Permitting Filing of Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, June 3, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

No. 3797.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
HULET M. WELLS, et al.,
Defendants.

Hearing In Re Settlement Bill of Exceptions.

Now on this day this cause comes on for hear-

ing in re settlement Bill of Exceptions, Ben L. Moore appearing for the Plaintiff, and Winter S. Martin for Defendant. Whereupon settlement is made to page 26, line 25, inc., and further time for settlement continued from June 17 to 24th, inclusive, and November Term, 1917, extended from June 17th to and including June 24, 1918, for said purpose.

Dated June 14, 1918.

Journal 7, page 1.

United States District Court, Western District of Washington, Northern Division.

No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, SAM SADLER, MORRIS PASS and JOSEPH PASS,

Defendants.

Bill of Exceptions.

BE IT REMEMBERED that on the trial of this cause in this Court at the November Term, A. D. 1917, the Honorable Jeremiah Neterer, presiding, when the following proceedings were had, to-wit: A jury was impaneled and sworn according to law, and thereupon the United States, plaintiff, to sustain the issue on its part offered the testimony of the following witnesses and certain exhibits as its evidence in chief:

NELL R. SMITH, who was offered as plain-

tiff's first witness, testified that she was the secretary of the Trade Printery, 88 Jackson Street, Seattle; that she kept the books and records of that concern and identified the cash book containing certain entries in May , 1917, relating to the printing of 20,000 circulars ordered for the "No Conscription League," Seattle Branch, as plaintiff's Exhibit I. This entry contained reference to two cash items of $10.00 each, one on May 7th and one on May 11th, for the payment of certain "No Conscription League" circulars. She also offered the Job Register of said concern as plaintiff's Exhibit II, containing the entry, "No Conscription League," Seattle Branch, 20,000 circulars, $20.00, delivered on May 11th, invoiced May 16. She also identified an envelope containing the manuscript copy of the circular, which this company printed at the request of the defendant, Hulet M. Wells, which was identified as Plaintiff's Exhibit III. She also identified the proof copy of this same circular as plaintiff's Exhibit IV. She next offered the invoice containing the entry, Seattle Branch No Conscription League, 20,000 circulars, $20.00, under date of May 11, 1917, as plaintiff's Exhibit V. Witness testified that she left this proof with the defendant, Wells, at the City Light Department Building, and made these book entries referred to. They were offered in evidence by the Government as Exhibits I, II, III, IV and V, respectively, and same were admited.

WILLIAM R. SAUNDERS was next offered as a witness and testified that he was President and

Manager of the Trade Printery in May, 1917, who also identified the Exhibits referred to. No objections was offered to these exhibits.

GEORGE P. LISTMAN was next offered by the Government. He testified that he was superintendent of the Mechanical Department of the Trade Printery in May, 1917, and was familiar with the particular job of printing ordered by the "No Conscription League," covered and identified by the several exhibits referred to. He testified that defendant, Wells, left this printing job with the Trade Printery and paid him $10.00 on account, paying the balance on delivery. Witness sent the proof to Wells at the City Light Department. It was returned by Wells corrected and O. K'd. The proof bore the particular notation, "O. K. with corrections, H. W." With also the words and figures, "P. O. Box 225." "Corrected proof. Would like circulars for Friday evening, Wells." Witness testified that the Union Label number, which serves to identify the shop turning out the work, was left off at the suggestion of Mr. Wells. Defendants admitted at this point that Wells wrote the notations and corrections on Plaintiff's Exhibit IV, o.k.ing and approving the proof.

The Government next called J. E. FRIERMOOD, who testified that he was present on May 11th at a meeting held in the Epler Building in the City of Seattle. He testified that this room had a board partition which divided it partially into two rooms. He went to this room shortly before eight o'clock in the evening. That there were possibly

thirty people present. He saw the defendants Wells and Sadler at this meeting. The matter of the then proposed National Draft Act or Conscription Law was discussed at some length. It was stated generally that the time to get action was then and not after it passed. He saw some circulars there similar to plaintiff's Exhibit IV, although these were in the finished form as distinguished from the proof with the O. K. on it as contained in Exhibit IV. He then identified Plaintiff's Exhibit VI as the finished "No Conscription" circular, which is identical with that set out in the indictment. Whereupon the finished printed "No Conscription" circular identical with that described in the indictment was offered and admitted in evidence as Plaintiff's Exhibit VI. This witness observed a big bundle of these circulars in the room. There was some discussion among those present about distributing these circulars on the following Sunday Morning early, alloting a certain number to the various precincts in the City. Witness observed a precinct map of the City on the wall of the room. A number of the persons present took these circulars. Witness could not remember what was said by Wells or Sadler except that whatever they said conformed in a general way to the discussion indulged in by the Assembly. This witness was not able to identify Morris Pass. There was some talk about vouching for or identifying the various members of the Assembly

in order that the meeting might be assured that the matter of the distribution of these circulars would not be told of or spoken about until they had been distributed on the following Sunday Morning. Brother Wells vouched for the witness. Someone suggested that the door ought to be watched or guarded, but whether it was in fact done, witness could not recall. This witness remembered particularly that Mr. Wells scoffed at the idea of the necessity of secrecy. Witness was then asked by counsel for the defence if Mr. Wells said there was not any cause for secrecy because there wasn't anything being done or contemplated that was improper or unlawful. Witness answered that he could not recall and that he was not sure on that point. Witness stated on Cross Examination that it was the purpose of the meeting to oppose the adoption of the Draft Act before it became a law and not afterwards. There were two delegates from the Central Labor Council present. There was talk among those present of reaching the Washington representative in Congress, so that they could be induced to use their efforts to oppose the pending Conscription Act. The purpose of circulating the paper or pamphlet, referred to as Exhibit VI, to-wit, "No Conscription" circular was to arouse a public sentiment against the passage of the law and not against its enforcement after it became a law. Witness was asked the following questions on Cross Examination

and made the answers quoted:

Q. Was there any suggestion by anyone at that meeting—Mr. Wells or anybody else—that force should be used then or at any time in reference to the Conscription Bill or the law which might be enacted thereafter?

A. No, I don't think so.

Q. Not a word of force mentioned by anyone?

A. I don't think so.

Q. Not even a suggestion of that?

A. No, I don't think there was.

Q. They talked about the idea of reaching the members in Congress, didn't they?

A. That was the opinion that I gathered.

Q. To reach the representatives of this State in Congress so that they would use their efforts in Congress to oppose this pending Act of Conscription—that was the sense of the meeting, wasn't it?

A. Yes.

Q. And the purpose as disclosed—the purpose of circulating this paper or pamphlet—was to arouse a public sentiment against the passage of the law, wasn't it?

A. That was the intention.

Q. And not against the enforcement of it after it became a law?

A. No.

Witness on Re-Direct Examination stated that a communication had been sent to the Central Labor

Council asking the Council's co-operation in some sort of a demonstration against the High Cost of Living, and witness attended this meeting for that purpose. Witness stated that defendant Sadler stated that they could take some of these circulars up to the Labor Temple where they could be obtained by others on Saturday evening; but this witness on Re-Direct Examination could not state that Sadler had anything to do with the distribution of these circulars other than the talk at the meeting.

DAVID LAVINE was next called as a witness for the plaintiff, who testified that he was a director of the Socialist Paper named, "The Call." He knew defendants Wells and Sadler. He attended this meeting on the 11th day of May, 1917. He arrived at the meeting about eight o'clock. When he got there the rooms were full. There must have been fifty people present according to his recollection. He observed the defendants Wells and Sadler there and observed the "No Conscription" literature (Plaintiff's Exhibit VI) on the table. He picked one of these circulars up and identified it as similar to Exhibit VI. There was quite a general discussion that night relating to these circulars. All the members present joined in the discussion and he could not remember what part Sadler or Wells took as everybody said something. This witness observed the Socialist Precinct Map on the wall and knows that the map was referred to in the general dis-

cussion concerning distribution. Some reference was made during the evening about the attempts on the part of various people to break up meetings of that character and it was suggested that the best thing to do would be to vouch for each other to find out who was there. Reference was made to patriotic organizations and hoodlums as being likely to break up the meeting. On Cross Examination witness stated that the discussion took the form of opposing the then pending Conscription Bill before it was passed by Congress. Witness was asked this question on Cross Examination by defendants' counsel:

Q. Was there any suggestion by anybody at that meeting that force should be resorted to in connection with this Conscription Bill that was pending in Congress?

A. No, I am pretty sure of that because I am very much opposed to force. I would certainly have protested if there had been anything said upon it.

This witness was positive that Joe Pass was not there but could not tell whether defendant Morris Pass was there or not. This witness came to the meeting under the belief that the Young Peoples Socialist League was about to meet. This witness did not know who prepared the "No Conscription" circular referred to as Plaintiff's Exhibit VI.

G. M. WELTY was next called as a witness on behalf of the Government. He knew the defendants

Wells and Sadler, observed these two defendants at the meeting, also the witness, Friermood. Witness stated that he was appointed by Mr. Duncan, the Secretary of the Central Labor Council, to act on a committee with a Mr. Spencer and Mr. Friermood to meet at the Epler Block for the purpose of holding a demonstration or parade, or considering the advisability of doing so against the High Cost of Living. Witness identified Exhibit VI as a circular similar to a number which he observed in the room that night. There was a general discussion about this circular. Two bundles were brought in and put on a table. They were opened up and the circulars distributed to those who requested them. Defendant Wells stated that he could not be at the Labor Temple the following evening (Saturday) and Sadler volunteered to be there and give them out. Witness stated that they vouched for each other and there was some discussion about appointing Sergeants-at-Arms, but didn't know whether anyone was appointed to that office, because of his position in the room. Witness referred to the partition between the rooms and stated that he could not see what was going on at the door. Defendant Wells wanted each one to take a bundle of these circulars for distribution in his precinct. Witness on Cross Examination stated that it was the sense of the meeting that they did not want to be interrupted. It was brought out in discussion that there

might be spotters around. That was the object of vouching for each person. Witness did not recall seeing the defendants Morris or Joe Pass. He would not know if they had been there. Witness was asked by counsel for the defense this question:

J. The sense of that meeting was that they should act in reference to this proposed Conscription Law at that time and not after it became a law?

A. The law had not been enacted.

Q. And the discussion was to take such measures as would be possible and legal to prevent that bill becoming and enacted into a law? That was the sense of the discussion, was it not?

A. I don't know whether it was the sense to do it legally, but at least to defeat that law if possible.

Witness did not recall the matter of reaching the various Members of Congress. Witness could not state whether Wells or Sadler took any of the circulars away with them. He knew that there was talk about the distribution, but knew nothing about the actual distribution or how it was done or handled.

JAMES A. DUNCAN was next called by the Government. He testified that he was Secretary of the Central Labor Council; that on the 30th day of April, 1917, he attended a meeting in the Good Eats Cafeteria in the evening. He knew Wells and his wife and testified that they and Miss Strong were present. He could not recall anyone else as being

present although there was quite a number of people. There was a general discussion in the matter of the publication of Anti-Conscription literature. In this discussion it was recognized as necessary to do something to offset newspaper work that was being done to spread sentiment in favor of conscription. It was felt that a circular or something should be gotten out. This meeting occurred between 6:00 and 7:30 in the evening. The matter of the distribution of these circulars was not talked while the witness was there. The discussion was confined to the preparation of a pamphlet or circular. Mr. Wells was asked to prepare and submit a pamphlet or circular to a committee for approval or rejection. Witness remembered that Wells stated that he was extremely busy and did not have any time to give to the preparation of the circular. He was finally asked whether if they decided to get out his pamphlet he would attend to the matter of printing it, because of his familiarity with printing matters, and heard Wells reply that in all probability he would not mind doing that. He was not there when any collection was taken to defray printing expenses; and did not recall that either of the defendants Morris or Joe Pass were there. He testified that he was present on the 23rd day of May at a meeting of the Central Labor Council and identified plaintiff's Exhibit VII, as a resolution which was presented to the Council by Mr. Wells, stating that

it had been pending before the Council for some three weeks prior to that time. This resolution was offered in evidence and thereupon Mr. Bell objected upon the ground that it was immaterial and would not tend to prove any issue in the case. This resolution was admitted as plaintiff's Exhibit VI over Mr. Bell's objection and exception noted. On Cross Examination by defendant's counsel this witness explained that there had been two separate matters of discussion presented about two meetings prior to May 23, 1917, to-wit, the matter of opposing Conscription and also the Importation of Coolie Labor. The Central Labor Council in this previous meeting held about two weeks before that of May 23rd combined or consolidated the two subjects and set them down as the special order of business for May 23rd, the said two subjects to be acted upon jointly as one and the same. At this meeting, to-wit, that of April 30th, there was considerable discussion about the Conscription Act, the sense of the meeting being that something should be done to offset agitation in the Press in favor of Conscription. It was suggested that a protest meeting be held. Witness thought that some of those present at the meeting had gotten in touch with members of the Congressional Delegation. The witness was asked this question:

Q. What was said at that time about the desirability of opposing or of taking action before

the law became effective, Mr. Duncan?

A. Why, it was felt right through those meetings that now was the time to act, that it was useless to take action after the thing was done.

And this was Mr. Wells' attitude. He was asked this further question:

Q. Was there any suggestion by Mr. Wells or by anybody at that meeting about the use of force, either before or after the Act became a law?

A. None whatever.

He was asked if he knew who prepared the circular and replied that he did not. He stated that his impression was that Mr. Wells did oversee the matter of printing it. He was asked these further questions and made the answers set forth:

Q. Now at this meeting at the Labor Temple was there any talk or suggestion by anybody that force should be used to effect the repeal of the Conscription Law?

A. Not one word or one suggestion. It would not be stood for for one moment.

Q. Was the sense of this meeting at the Good Eats Cafeteria and the sense of the meeting at the Labor Temple against the Conscription Act or against the war itself?

A. Against the Conscription Act.

This witness stated that they opposed the war right to the last ditch until war was declared, then when the Draft Law had passed that he and the

other members of the meeting felt they had a right to ask for its repeal as a law most unwise. The repeal was advocated in an orderly way, and that the preparation of the circular was agreed upon for the purpose of arousing legal opposition to the passage of the law and for no other purpose. The meeting on April 30th at the Good Eats Cafeteria was an open one and no watchmen were on guard so far as the witness knew.

J. F. BARNEY was next called as plaintiff's witness. He testified that he was caretaker of the Labor Temple at Seattle during the month of May, 1917. He recognized the "No Conscription" circular, (Plaintiff's Exhibit VI) and recalls that he saw a package of about fitfy of these circulars in one of the rooms in the Labor Temple, viz: Hall No. 107. They were placed on a pedestal in the Hall and he dumped them into the waste paper receptacle. He did not know who carried them to the Temple, but simply found them on the table or pedestal in one of the rooms in the building.

THOMAS B. FOSTER testified that Defendant Wells was arrested May 28, 1917, and that Ft. Lawton is a military reservation in the Northern limits of Seattle.

SARAS PASS, sister of the defendants Morris and Joe Pass, was called as the Government's next witness. She identified a signature on plaintiff's Exhibit VIII, (Application for a Post Office Box)

offered for identification, as that of her brother Morris Pass.

GEORGE C. REID was called as plaintiff's next witness. He testified that he was then employed as a postal clerk in charge of the Post Office Box Department in the Seattle Post Office. He identified Plaintiff's Exhibit VIII as an application for a Post Office Box, in the City of Seattle made under the date of May 4, 1917.

FRANK B. GREENE was called as plaintiff's next witness. Witness testified that he was employed as an agent of the United States Secret Service and was assigned to duty and acting as such in the Secret Service Office in New York City in the month of October, 1917. Defendants Morris and Joe Pass were questioned by operative Burke in witness' presence concerning their relation to the publication and distribution of the "No Conscription" circulars, while in the witnesses' office in New York City. Witness made certain stenographic notes of the questions propounded to the defendants and their answers thereto. Witness recalled that Joseph Pass told him Morris and Joe had left Seattle on May 28th or 29th to travel East to New York by slow stages, working his way from place to place enroute. This witness stated that Joseph Pass said that he was present at several meetings in Seattle at which the "No Conscription" circular was discussed, mentioning Stevens Hall and the

Good Eats Cafeteria. Morris said he attended two meetings where the no-conscription leaflet was discussed.

Morris Pass told the witness that it was his purpose to circulate them. Morris said something about giving them to his friends. Witness referred to the transcript of the stenographic statement which he took at the time and then recalled that Morris Pass stated that he was at the meeting when they were distributed among those present; that the circulars were divided up among those present for distribution purposes and further that Morris Pass distributed some of them. Witness remembered also that Morris Pass stated that a collection was taken up that evening amounting to $10.00 which he gave to Mr. Wells to pay for the printing. On Cross Examination witness remembered that Morris Pass did not fix the time or place but that Morris said that he attended only two meetings; that the second one was convened for the purpose of protesting against the High Cost of Living and that he attended it for that purpose; that Joe Pass said he was present at one meeting in the Good Eats Cafeteria but could not remember whether Joe said he was at the Epler Block or not. Witness remembered that Jos Pass said he had nothing to do with the preparation of the circular but that it had been prepared before he reached the meeting and entered some objection at the meeting against

the wording of the circular, "but not very strong." On Re-Direct Examination witness Greene said that he (Joe Pass) said he was present at the meeting where the draft of the circular was discussed; that the meeting was a sort of an informal one; that there was a general discussion about it and some objections raised to it by the members present. The defendant, Joe Pass, entered some objection to the wording and tone of the circular. Everyone in fact had raised objection to the general tone of the circular. That Joe Pass was asked if he protested against the circular and its distribution and Joe replied that he did not because he was a stranger in the meeting who had casually dropped in and that he did not enter into the general discussion which was carried on among those present about the circular.

WILLIAM N. FLYNN was next called as plaintiff's witness. He was then holding the rank of Ensign in the Navy but was employed in October, 1917, as an Assistant Operative in the United States Secret Service for the State Department at New York. He was present when Morris Pass was interrogated, in the office of the Secret Service Department at New York City, October 13, 1917. Mr. Greene and Mr. Burke were also present. This witness stated that Morris said he had been in Seattle up to the 28th or 29th of May, 1917, when he left to work his way to New York. Witness remembered

that Morris Pass said that he was present at the meeting at which the circulars were first opened and divided among the various people present, everybody helping themselves; that he had taken ten or twenty and distributed them to his friends. Upon objection being raised by counsel for the defense the Court admitted the further statement of Morris Pass with the understanding that it could only be admitted against him individually as the conspiracy charge had ended. Witness was then permitted to testify under the announcement from the Court that his (Morris Pass') testimony could only affect his own individual case and would not be binding upon the others in the conspiracy. Witness then said that Morris Pass said that at the meeting the circular was read and approved in the main and the money collected from those present to cover the cost of printing it to the extent of about $10.00; that someone asked him to take charge of the money which he did, agreeing to hold it until the circulars were printed. Morris Pass further stated that he was asked to obtain a Post Office Box, that he tried to rent one, but could not get references enough to satisfy the authorities; that Box 225 was used and that it was probably secured through Mr. Fislerman, but the witness did not know, stating that he was acting for the "No Conscription League."

C. J. FRASER was called as the Government's next witness and testified that he found a copy of

the plaintiff's Exhibit VI, the "No Conscription" circular upon the front porch of his home, which was located about a block from the boundary line of the Fort Lawton Military Reservation on Sunday Morning, the 13th of May, 1917. He was asked if he exhibited this circular to anyone else. Thereupon counsel for the defense objected upon the ground that the defendants were not shown to be responsible for the witness' exhibition of the circular. This objection was overruled and thereupon Judge Bell for the defendants was allowed an exception. Witness then stated that he exhibited this "No Conscription" circular to one Mrs. Knight.

MRS. C. J. FRASER, wife of the preceding witness, was next called by the Government. She recognized plaintiff's Exhibit VI, which her husband found on the front porch of their home on Sunday Morning, May 13th. She found three other similar circulars in her mail box. Defendants moved to strike. Motion overruled, same ruling.

DUBOIS MITCHELL, reference librarian of the Seattle Public Library, offered the population statistics for the City of Seattle for the census of 1900 and also that of 1910. The counsel for the defense objected upon the ground that it was immaterial, but his objection was overruled and the census records of Seattle admitted.

ARTHUR ROYCE, court reporter, was next called by the Government and testified that he re-

ported the case of U. S. vs. Morris Pass, cause No. 3752; that he had with him portions of the testimony of Morris Pass given under cross-examination by Mr. Moore, which were as follows:

He was asked at the former trial whether he paid for the printing of the circular. He denied so doing. He admitted that a collection was taken up to pay for the printing of the circular. The money was placed on a table at the meeting; that Mr. Wells took part of the money and he took part of it, which he gave to the defendant, Wells, later. He was asked at the former trial whether he said he would obtain a postoffice box for the organization and stated that he went to the postoffice to make application for a postoffice box at the Seattle Post-office; that the box was for his own use, as well as for the "No-Conscription League."

Thereupon the plaintiff rested. This was substantially all the evidence offered by the plaintiff in support of his case in chief. The court excused the jury, which retired from the courtroom.

Mr. Bell, attorney for the several defendants at bar, then moved for a direct verdict as to each and all of the defendants, stating that the grounds of his motion applied equally to all of the defendants, stating specifically "that the evidence is insufficient to show the commission of the crime charged in the indictment, or any of them against the United States."

The court in substance stated that actual force was not necessary as an element of the conspiracy charged, and after argument by Mr. Bell, denied the motion for directed verdict as to each and all of the defendants, to which refusal of the court Mr. Bell took an exception, which his Honor allowed, and which was duly noted in the record.

Thereupon the defendant, HULET M. WELLS, was produced and sworn as a witness for himself on behalf of the defendants.

Defendant testified that he was thirty-nine years of age; had worked for a number of years as a postoffice clerk and as a city employee, and was so employed by the city during the time of the alleged conspiracy; had received some legal training and had been duly admitted to practice law in the Supreme Court of Washington. He had long been connected with the Socialist movement and had taken an active part in Socialist politics, commencing as early as 1904. He stated that there was a national organization, known as the American Union against Militarism, which worked with those Socialists who were inclined to work with them, stating that many prominent Socialists thought that the ends of the Socialist party would be furthered by uniting with any body or society which was pursuing the same object. This Union against militarism had a branch in Seattle. Defendant took part in the movement and attended an open meeting

at the Dreamland Pavilion, stating that a number of prominent men, including a public service commissioner, spoke at this meeting and that he also was one of the speakers.

The object and purpose of the society was to present to the people the view that newspapers of the country would not present at that time, viz: the view that the United States was not in imminent danger of invasion; that we had an efficient Navy and there was no imminent need of greatly increasing the expense of the Army and Navy. Defendant was conscientious in this belief; was strongly against old world militarism and did not want to see it implanted in this country.

Said meetings were held in Seattle before the declaration of war and were held quite frequently about a year before the declaration. Meetings were held at Dreamland Pavilion and at the Good Eats Cafeteria, and speaking generally followed.

In addition to the open meetings and public discussions, a great deal of literature on the subject was received from the headquarters of the society, —one of which was at Washington, D. C., and the other at New York. This literature was circulated locally and read at meetings of the organization, as well as in the meetings of the Labor Unions and Councils. The whole purpose of the society and of the defendant was to get before the people the opinions offered by those who were favorably dis-

posed in their point of view to this movement to place it before Congress. This society continued its agitation up to the time it was seen that the country was about to get into the war. From that time until the declaration of war, they confined their efforts to trying to bring about an honorable avoidance of the war. After war was declared by the United States, the society ceased all opposition to the war itself. After the war was declared, the organization kept together because it was thought there would be many occasions which would arise from time to time, which would require the liberty of the people to be safe-guarded. It was thought that conscription would quite likely become one of the issues and that the society and its members should endeavor to prevent the enactment of such a law.

At this point, Mr. Bell for the defendants asked this question:

"Q. What steps were taken by the local branches, by yourself and other members, with reference to opposing the conscription act."

Mr. Reames for the prosecution objected upon the ground that the inquiry was immaterial.

Mr. Bell then referred specifically to the Act of May 18, 1917.

Mr. Reames then objected on the ground that such inquiry was immaterial.

The court sustained the objection.

Mr. Bell then stated to the court as follows:

"It would tend to show the matter of good faith on the part of these defendants,—what they did, what they said in reference to this Conscription Act, what they did and why they took part in the circulation of the circular about so much has been said in the cause in chief."

The court sustained the objection.

Mr. Bell noted an exception.

Defendant then stated that he was opposed to the conscription law before it became a law, stating as follows: I was never so deeply moved over any contemplated legislation as I was over this Conscription Act.

"Everything I could lawfully do I was determined to do to prevent its enactment. I considered that it was opposed to all of our American tradition."

Defendant wrote various men in Congress in February, 1917, and received replies from them, and among them one from Mr. Dill, stating that he, Mr. Dill, was in agreement with his views. Defendants offered to introduce these letters. Mr. Reames for the Government objected to their introduction. The court sustained the objection. Exception noted.

Defendant further stated that he and his associates in the organization referred to, circulated literature, made speeches before different labor bodies and tried to impress upon the people of the United States their purpose to oppose legislation of

that character. This was before the opposed draft act became a law.

On April 30, 1917, a group of interested persons of the same organization, to-wit, The American Union against Militarism, met at the place they were accustomed to meet, to-wit: in the Good Eats Cafeteria in the city of Seattle. It was an open meeting held, however, without notice to the general public. It was so open in fact, that a reporter walked in on them and inquired of the members present the purpose of the meeting. After dinner general discussion followed. About twenty-five persons were present. Defendant Wells was sure that neither of the Pass brothers were present, but he saw them at a later meeting. Most of the discussion at the meeting was as to what the general idea was in regard to what should go into the circular.

The sense of the meeting witness understood it, was that the proposed draft legislation in Congress was unconstitutional; that it was proposed that a circular should be prepared in which defendant proposed that Daniel Webster should be quoted, because in some case in Court, Webster was supposed to have argued against the constitutionality of such a law in 1812; that in addition witness wanted it shown that such legislation was entirely out of harmony with American institutions. That it tended to encourage militarism and would inevitably result in a war in the end. The members

of this meeting on April 30, 1917, were respectable, law-abiding men and women. There was no talk or suggestion of using force or employing force, or advising the employment of force. Such an idea was absurd and no such thought was ever expressed by anyone.

Asked as to what the meeting finally concluded to do about getting out the circular, defendant stated that he left early, as Mr. Duncan, the Government witness, had stated, to attend a meeting of the Electrical Workers Union.

Discussion was still on when the defendant left. He stated that they tried to press him into preparing a circular, when he had expressed his idea of what ought to go into the circular. He said that he had enough to do,—did not have the time and so begged off. As he was going out, he was asked if he would mind attending to the printing of it because of his experience in that line. Wells must have promised that he would attend to the printing of it because he did. No form of circular was adopted before the defendant, Wells, left the meeting. The members present had not come to any conclusion when he left. There was not to be anything drafted that night. It was simply put into somebody's hands to do.

Another meeting was called for the following Friday, which would be May 4, 1917. This meeting was to receive the report of the committee on the

circular and provide means for its being published, and after it had been printed there was to be another meeting to provide for its distribution.

Friday evening, May 4, 1917, the second meeting was held at the Good Eats Cafeteria. The defendant's wife came in after the others had eaten their dinner. Wells' wife was there when he went in. Defendant Wells was just in time to hear some discussion toward the last. The circular had been prepared and read when he arrived. The committee, whoever they were, had prepared it, had passed it over to a table where Morris Pass was sitting. Pass had been prevailed upon to act in a secretarial capacity. At the April 30th meeting the secretary had been chosen but he either declined to act or failed to attend. Morris Pass was selected to act as secretary. Defendant, Morris Pass, according to Wells, was somewhat reluctant to take it, but was coaxed to do so by those present and Pass kindly agreed to do so if there was not too much work connected with it. The proposed manuscript was lying on the table. Wells walked over to the table and got the circular, looked it over and objected to one of the phrases that it contained because it was too strong. Witness called attention to the fact that there might be danger of civil war in the event the conscription law should be enacted; that the language had a very bad sound and that they should strike some of it out and a portion of the circular

was stricken out.

Witness did not prepare the circular, had nothing to do with its preparation. Witness stated from the witness stand that he could give a pretty accurate surmise as to who had written it, but stated that inasmuch as he had been dismissed from the Public Service in the city of Seattle he would not disclose the identity of that person, even if he knew definitely, which he did not. He stated that he would have no objection to disclosing his own part in the preparation if he had taken any, but witness denied taking any part in the preparation of the circular whatsoever.

He said it did not express his entire sentiments, nor was it couched in the language he would have used had he written it.

At this meeting there was no talk about using force, neither was there any expression of that kind. The people present who participated in the meeting were indignant that something was being put over by the great industrial interests of the country; that those present believed, were in favor of compulsory service. They thought that unfair pressure was being brought on congress by the daily papers for the purpose of obtaining a permanent system of military service. They expressed the thought at the meeting that the conscription law was wanted as a permanent institution, rather than a necessary step in the pending war. At this meeting on May

4th a collection was taken up to pay for the circulars that would be printed. Defendants Joe and Morris Pass were there for the first time. Joe Pass took no part in the meeting at all. Morris Pass acted as temporary secretary. Witness was not clear whether he took the circular from those present at the meeting or whether he had received it, as he stated at his former trial, from Morris Pass at the Labor Temple. The manuscript was typewritten. Morris Pass gave him some money at the Labor Temple, which was the same money that was collected on the night of May 4th.

Defendant took the circular to the Trade Printery. Witness suggested to Mr. Listman, who testified for the plaintiff, that it would be well to leave the union label off the circular as it might injure Mr. Listman's business.

Witness stated that the meeting in the Epler Block, May 11th, was an open one. It was suggested that someone present in the meeting might not be in symapthy with those present and it might lead to the meeting being broken up. Defendant laughed at the idea and tried to discourage it, but their ideas prevailed. The feeling of suspicion on the part of the members present dated back to the time when the Socialist headquarters were destroyed and their property burned and broken up. This meeting on May 4th was the only meeting which defendant observed defendant, Joe Pass.

Printer's proof of the circular (Exhibit 4) was sent to defendant Wells' office in the County-City Building, where he was employed in the Lighting Department. He corrected the proof and took it to the office of the Trade Printery, where he turned it over to one of the employees. He made the printer's proof corrections referred to by the Government witnesses, and wrote on the back thereof when he wanted delivery made. He stated that the Government's testimony was correct with reference to the correcting of proof and paying for and procuring the printing to be done at the Trade Printery.

Wells received said printed circulars, took them to the Epler Block for the Friday night meeting on May 11th. The meeting place in the Epler Block was the regular headquarters of the Socialist party. Witness understood that arrangements had been made whereby he and his associates were to have the hall that night for the purpose of their third meeting. Witness wanted the meeting held in conjunction with the Socialist party so that the same would have a good attendance and was prepared to make a little talk as to what he and his associates in the No-Conscription League were trying to do. Wells brought the circulars with him, arriving somewhat late, and found that the arrangements had not been properly made for having the hall to themselves. There were people there for three different purposes. A committee meeting for the

high cost of living met there, composed of Mr. Welty and Mr. Friedmood. There were several others present who were interested in that movement but not on the committee; and there was a committee representing the Young Peoples' Socialist League; and there were still others who came to attend the No-Conscription League meeting.

Witness stated that he explained that there was a conflict of dates and asked whether or not the No-Conscription League could have the right of way. This was agreed to by those present and the meeting progressed. He then stated that it devolved upon him to do the explaining and he explained in general what the purposes of the No-Conscription League were. Witness then left the meeting, went out and brought in his pamphlets for distribution. They were opened up and everybody who would take some were given them for distribution in their home precinct. This was, as the witness explained, the time honored way in which the Socialists distributed their literature. The party for a number of years had tried to maintain the same kind of an organization as the Republicans and Democrats, viz: a precinct committeeman in each precinct, who attended to the work and distribution, leaving Socialist literature on the door steps of the homes in the city on Sunday morning. This was the method that was adopted for distribution.

Witness stated that most of those present took circulars for distribution. Asked as to whether he took any personal part in this distribution, Mr. Wells stated that he distributed quite a number himself. Sadler had nothing to do with the distribution that the witness knew of.

Defendant Sadler was present when the witness made a talk. Sadler didn't understand at the time witness got up and made his talk anything about what they were trying to do as witness thought, but if Sadler said anything at all witness thought he agreed with the general purport of witness' talk.

Q. What did the Pass brothers have to do with it?

A. They didn't have anything to do with it other than Joe Pass happened to be at this meeting at the Good Eats Cafeteria and took no part whatever. There was never a worse perversion of justice or authority than the bringing of him back here to answer in this case just because I mentioned that he happened to be present at a meeting just the same as James Duncan or Miss Strong or my wife.

Witness stated that at the former trial he testified that he met Morris Pass in the lobby of the Labor Temple and took the manuscript which later was printed as the circular referred to as Exhibit 6 from his pocket and gave it to him. Witness, however, recalled more clearly during the present

trial that he got the manuscript from Morris Pass at the Good Eats Cafeteria and got the money at the Labor Temple. He stated in response to Mr. Reames' inquiry that he must have had the typewritten manuscript in his possession in his pocket for several days. Asked particularly, said he had it in his possession at least three days. He did not recall that he read it carefully during this time or that he looked at it from the time he received it from Morris Pass until he gave it to the printer. He admitted that if he read it at all it was only "superficially".

He delivered the same to the Trade Printery some time prior to May 11th and some time after May 4th. "Witness admitted that there had been a discussion between him and Listman about leaving off the shop number from the union label on the circular. Witness suggested that if it was likely to hurt Listman's business any, it would be a good thing to leave it off. Witness knew a paper like the Post-Intelligencer would be likely to knock. He denied that he left it off for any reason connected with the District Attorney." He directed the printer to print twenty thousand copies at the agreed price of twenty dollars. He paid ten dollars at the time and ten dollars later when he received the bundle of printed circulars, making both payments to the printery in person. He asked them to send the proof to him. He received the proof probably Thurs-

day, before the meeting on Friday night, May 11th. He corrected the proof immediately after work at five o'clock on the day received and took it down to the Trade Printery. He made some corrections in the manuscript. Put in the letter "R" before the word "Republic," correcting the word "resist," it being spelled "rezest." He wrote in the figures "225," referring to the postoffice box number; signed the same as stated by the Government witnesses, writing the phrase, "O. K. with corrections."

Witness stated that he personally took the corrected proof manuscript from his office down to the printing office. Witness was interrogated about reading the manuscript for purposes of proof. He was asked whether he did not read every word of the circular by Mr. Reames. He replied that he read every word of it, but simply as a proof reader, paying particular attention to the spelling, punctuation, and proof, without attempting to gather the sense, stating that he had no idea and didn't appreciate at the time he placed it in the printer's hands that there was any objectionable language contained in the circular, admitting, however, full responsibility for placing the same in the printer's hands. Witness was asked for the names of the people whom he had referred as too cowardly to take responsibility for the circular, and in reply said that if he knew he wouldn't tell and this because he himself had suffered persecution. As to distribution,

he stated that he was not solely responsible for it, but distributed about fifty or possibly one hundred out in the district where he lived, going from house to house early Sunday morning. Distribution by him was made in broad daylight at houses where many of the people were up, because he observed smoke coming from the chimneys. It took him about three-quarters of an hour to distribute the bundle of circulares which he took for that purpose. He probably took a precinct map and followed the lines of a precinct. Witness knew nothing about the circulars which were distributed in the Fort Lawton district. He did not know the precinct committeeman for that district. Asked if he could find out who he was, stated that the precinct organizations went to pieces some time ago and the precinct organization was disrupted. Witness said in this connection, "We only had some of the most faithful workers with us on that work."

Witness stated that he did not know more than four or five of the forty or fifty persons who attended the meeting May 11th. Witness testified that he did not see Morris Pass at the meeting held for the purpose of distributing the circulars. Attention of witness Wells was then called to his testimony at the former trial wherein he stated that Morris Pass did not come to the distribution meeting on Friday night until quite late. In reply he stated that probably his recollection at the former

trial was clearer and he would say that Pass did come late. Witness was a little wrought up when he found three meetings there. As long as Morris Pass had accepted the secretaryship, witness thought he would arrange for the hall.

Witness testified that the meeting of May 4th was the first one at which he saw Morris and Joe Pass. Asked if he did not testify at the former trial that they attended the meeting of April 30th, replied that he thought they did, but having talked it over with his wife, whose memory was very good, he was at this trial absolutely sure that they were not there. Witness admitted that he had said nothing at the former trial about the meeting of May 4th. He said: "We were never asked anything about the other (meaning the meeting of May 4th). There was talk about a meeting, and those meetings being a few days apart, and my wife and I being at both meetings, I made a mistake about the Pass boys. They were not at the first meeting, as I know now. My wife cleared that up afterwards." Witness stated that he was familiar in a general way with the National Defense Act, although he had not made a careful examination of it. He had read the Proclamation of Congress on April 6th, declaring war, in the Current News. He knew that Morris Pass was going to rent a postoffice box, as it was discussed at the May 4th meeting, stating that some of the members present thought it necessary

to give some address in order to fix responsibility, otherwise people wouldn't pay attention to the circular, thinking that it was of pro-German origin and that it would not show that it was against militarism, which was the object of the meeting. During the meeting it was suggested that a postoffice box be used and that of the Socialist World could be obtained. He did not know the number at the time, but learned from Morris Pass that the number was 225. Pass called him up on the day that witness read the proof, and said that he had not been able to rent a box and it was then that the box number 225 was selected, which was the one used by the Socialist World.

His attention being called to his testimony at the former trial he said that Morris Pass telephoned him that the postoffice authorities were holding him up because he could not give a reference, and thought that his testimony at the time was true, but the fact was Morris gave him the number and he put it on the proof sheet. On re-direct examination by Mr. Bell, Wells stated that other ways and means of getting anti-conscription sentiment aroused were discussed, viz., mass meetings and parades, etc. It was the sense of the meeting that while these methods might be adopted later, to scatter the anti-conscription idea, it would be better to distribute the circular in the manner in which it was afterwards done. Mr. Wells was then recalled and of-

fered as a witness in chief and interrogated by his counsel concerning the resolution at the Labor Temple on May 23, which he offered before that body. In reply he stated that before May 23rd a resolution had been offered on the subject of coolie labor. It was intended to take up the discussion a week earlier, but for some reason it was postponed for one week. On May 23rd the resolution, identified as Government's Exhibit "7," was offered by Wells and, as he stated, showed the difference between his attitude then as against his attitude before the Conscription Law was passed, because, in the resolution Congress was asked to modify one particular part of that law, viz., that the Congress recognized the rights of the conscientious objector. Wells stated that the resolution was intended to bring about a modification of the law so that there would be no discrimination; that he accepted the law as inevitable and simply asked for a modification in one particular. He prepared and presented it himself at the regular meeting of the Seattle Labor Council on this date, viz., May 23rd. That 75 to 100 delegates were present at the meeting of the Seattle Labor Council. There was no suggestion at that meeting about the use of force in objecting to any law of the United States. The resolution was carried by a large majority, only two members dissenting. The witness wrote the resolution offered on May 23rd himself in his own hand-

writing. Witness testified that the correction in pencil on Government's Exhibit VII was made by him in his hand writing. Witness was asked what he meant by the following words in said resolution: "Those whose ties of blood and birth would compel them to either resist conscription or to crush with fratricidal brutality the best impulses of the human heart," and if the witness did not mean the Germans and Austrians. The witness answered that he meant those who probably had relatives fighting on the other side, and upon the question being twice repeated, the witness said that he meant a certain part of the Germans and Austrians who were conscientious objectors. Witness did not at any time advise or encourage anyone to refuse to register under the Draft Act after it became a law. Knowing that one of his brothers had conscientious objections to the draft he advised him to claim his exemption.

ANNA LOUISE STRONG was next called by the defense and testified that she had resided in the City of Seattle for ten years and had known Mr. Wells and Sadler for a long time, and had no acquaintance with the Pass brothers. She was connected with the American Union Against Militarism, attended a number of its meetings held by the Seattle branch before war was declared. She was asked as to the purpose of the local branch and the general organization. At this point Mr.

Reames objected on the ground that the question was immaterial. Mr. Bell then stated that it was preliminary for the purpose of leading up to other questions. The court sustained the objection and exception was noted by Mr. Bell. Up to the day war was declared members of the association, including the witness and Mr. Wells, were quite active in getting a straw referendum and wiring the results to Congress daily. After the declaration of war the organization or group practically went to pieces. One or two meetings were held to discuss whether any further activities should be undertaken. Conscription was the first subject discussed. Members of the organization knew that it would be one of the firt things to come up. Witness was present at the meeting of April 30th in the Good Eats Cafeteria, three or four weeks before the Draft Law passed. The bill was then pending in Congress. This was an open meeting, at which thirty or forty attended. There was a general discussion of several things, but the sense of the meeting was that something should be done to prevent the passage of the Conscription Law. Some communications from the East were discussed. The feasibility of holding parades and mass meetings was also discussed. The idea of holding parades was discouraged and dropped because, in view of the public feeting, it was thought it would provoke a disturbance. The main discussion centered on

literature which it was thought could be obtained from the East. It was then observed that this literature could not be obtained in time. Matters were pressing on and steps should be taken before the law passed. The meeting finally concluded in favor of getting out some literature. Witness remembered that Mrs. Wells was present with Mr. Duncan. She was asked to serve on the committee, but didn't have time. Mr. Wells also refused for the same reason. He was then asked, because of his familiarity with printed matters, whether he could handle that end of it. Wells replied that he would be glad to look after that phase of it. Wells said this just as he was putting on his coat to leave and left before the meeting was concluded. No circular had been prepared up to this time. The contents of the circular were discussed, "only in a very sketchy way." "One of the suggestions was that the circular ought to be very short and to the point." The exact details of the circular were left and not settled at this meeting, nor was the particular language of the circular adopted. The general purpose of it, however, was to oppose the passage of the Conscription Law, which was then pending in Congress. A good deal of discussion was had between the members to the effect that they had all written and telegraphed to Congress so much that it would be better to get some additional people stirred up to do the same thing and the circular idea

was finally adopted at this meeting. The circular was adopted as a means of arousing public sentiment generally. There was no suggestion about using force or engaging in forcible opposition to the Selective Draft, the only suggestion of force at all, which came up in the discussion was to the effect that a possible disturbance might result in arousing public opinion and that some means should be adopted to get the information before the public, which would not be of a sort to stir up trouble. It was the sense of the meeting that parades and mass meetings might do this. The entire members present were against the adoption of the then proposed Draft Act or Conscription Bill. Witness did not remember whether defendant Sadler was present or not, but would judge that he was not present, nor were Morris and Joe Pass. The matter of distribution was discussed to much greater extent than the actual contents of the circular, because it was known that the distribution would have to be made very soon if it was going to be effective, and it was suggested that if made Sunday morning it would reach a large number of people who were then in their homes, and the house to house circulation was deemed the best method of distribution. Witenss was asked this question:

Q. What were you trying to accomplish—what was the meeting trying to accomplish by scattering these circulars broadcast over the city?

A. To make people feel if they didn't want Conscription that it was time for them to act—better do something about it, pass resolutions and take interest in their laws.

The meeting was composed of Socialists and other representatives from the Labor Temple. Witness remembered that a very large proportion of the meeting was composed of representatives of organized labor and of the Socialist party. There was a great deal of discussion, among other things, as to how far in the war the Nation should go. Various communications from various Congressmen were referred to. Witness could only remember Wells and Duncan among the thirty or forty people who were present. On cross-examination by Mr. Reames she would not state positively whether Morris and Joe Pass were there, but her impression was they were not. A collection was taken at this meeting. Money was laid on the table for that purpose. This collection was for the purpose of defraying the expense of the circular.

Witness never saw the circular before it was distributed, had nothing to do with the distribution itself and saw it for the first time when it was published in the newspapers. On re-direct examination witness stated that the personnel of these meetings varied a great deal from time to time. Meetings of the League extended back to the time the country seemed to be in danger of getting into

war with Mexico.

MORRIS PASS was next called as a witness on behalf of the defendant. He stated that he was not present at the meeting of April 30th, but was present at the meeting of the Goods Eats Cafeteria on May 4th. This was an open meeting at which about thirty people were present. Defendant Wells and witness' brother, Joe Pass, were at that meeting. Joe Pass took no part in the meeting at all or in the subject under discussion. Witness stated that the meeting was in progress when he arrived; that part of the circular had been read and he only heard a portion of it, perhaps a third or a half. After this general discussion followed and more or less criticism indulged in. Some parts of it were eliminated. Witness could not recall, however, just which parts they were. Wells joined in the discussion, according to this witness, making the statement that it was objectionable and had a tinge or tone of yellow journalism to it. Wells' criticism was of the form of the article and not of the purpose of it. The purpose of the meeting, as the witness understood it, was to create sentiment among the people of Seattle to appeal to Congress to consider the law very carefully. The Selective Draft Act was then pending in Congress, but had not then passed. There was much discussion as to the unconstitutionality of such a law and that it was opposed to the history and traditions of this Government. Asked as to

what arrangements had been made for printing it, witness stated that these arrangements had evidently been completed, for he didn't find out who took care of the printing until later. During the meeting someone was asked to act as secretary. Defendant Wells was asked. They all stated they had no time to attend to it, and witness was asked to take care of the secretaryship. He offered the same objection and the members present then suggested that all they wanted was to have someone arrange for a postoffice box. Witness agreed to undertake to do that. Witness went to the Postoffice Department, procured a blank requiring him to give two people for references and entered his application for the box. Returning later he found that one of his references had not responded and as the box was wanted for immediate use he called up Mr. Wells and told him he could not obtain the postoffice box. At the meeting the matter of using the Social box, No. 225, was discussed. Everybody agreed to this, except one or two, who thought it best to have a box for that special purpose. Finding that he could not obtain the box in time, he called Mr. Wells. The discussion at the meeting was to taek some steps as to prevent the passage of the law before Congress should enact it into a law to urge as many people as possible to co-operate with the organization to bring forth its aims. Mass meetings and parades were discussed. A collection was taken

up, the money placed on the center of the table. This was at the meeting in the Good Eats Cafeteria. After the circular had been read general discussion followed. Witness had nothing to do with the circulation or distribution of the pamphlet. On cross-examination witness stated that he was not at the meeting where the distribution was discussed. He did not know who wrote the circular, nor anyone who does know; saw the printed circular for the first time on the porch in front of his house. Witness attended a meeting in the Socialist headquarters, at which the possibility of discussing the high cost of living was engaged in. This meeting was after the meeting of May 4th, to-wit, on May 10th or 11th, at which the money was collected. At the meeting of May 4th witness did not observe any printed circular was there, but witness did not hear the entire contents read, as some portions of it had been cut out, and could not state what portion of the circular Mr. Wells objected to, although witness was present when Wells objected to certain portions. Witness never talked with Mr. Wells as to who wrote the circular. The members of the meeting knew that the witness was not a citizen of the United States, but that made no difference and his citizenship was not discussed. It was understood that he was not a formal secretary, but was merely acting to look after the matter of the postoffice box. Witness was born in Russia and came to the United

States when nine years of age and was then twenty-three years of age. Asked specifically whether he attended the meeting of April 30th, replied that he did not, stating that the first one he did attend was the meeting of May 4th. Witness stated that he went to the postoffice to rent the box about noon. The meeting was held on May 4th after dinner in the evening, between six and seven o'clock. Mr. Reames called his attention to the application for postoffice box, which he had stated that he signed at the noon hour, and was asked if made out in the noon hour of May 4th how it was possible that the matter of the postoffice box was not arranged for until six o'clock that night. Witness could not account for this, but stated positively that he was present at the meeting on May 4th. This was the only meeting he attended in which the postoffice box discussion arose.

Q. (By Mr. Reames.) Assuming that the postoffice records are correct and that you made the application on May 4th and your testimony is true that you went down there at noon, it is inexplainable.

A. It is undoubtedly a mistake.

Witness stated that his brother, Jos Pass, was with him at the meeting and the only other person whom he knew at the meeting was Mr. Wells. The meeting of May 4th was the only one that witness attended. There were about thirty people present,

some of whom were women. Witness did not know who was chairman of the meeting. Witness took charge of $9.00 or $10.00 at this meeting. Finding Wells was not present, someone suggested that the money should be given to him. Witness then stated that he would be at the Labor Temple and would attend to that. Witness was not a member of the "No Conscription League" and took no part in the discussion as to what should go into the circular and assumed no responsibility for it at all. Witness was then asked if he was not asked the question in New York City in the office of the secret service whether he was present when the circulars were divided up for distribution. Witness stated that he did not make such a statement. He was asked if Wells did not leave the meeting, if he did not say that Wells was there in the earlier part of the distribution, and whether he did not take some circulars for distribution. Witness recalled that such questions were asked, but that his answers were not as indicated by Mr. Reames. Witness was asked whether he did not say in New York City at the secret service office that he had a dozen or two of these circulars and handed them around among his friends. Witness replied that he did not so state. Mr. Reames then propounded a number of questions to the witness, asking if these questions were not asked of him in the secret service office in New York and if he did not make certain replies to them,

the substance of which was that the circular was read, money was collected, that the witness took care of the money and that the funds were to be turned over to him because he was about to leave Seattle. Witness' attention was then called to this occasion, which was fully identified, when he was questioned by United States secret service men in New York City. Witness denied that on said occasion he had admitted that he was present at the meeting when the circulars were divided up for distribution; denied that he had said Wells was there in the earlier part of the distribution, and denied that he said that he had circulated some of them, the exact number whereof he did not recollect; that he had not left any in doorways or halls or like that, but had just handed them to his friends; that he had had about a dozen or two dozen of those circulars. Witness admitted that on said occasion in New York he had told the secret service men in language which in substance carried the thought that he had first acted as secretary at the meeting when the circular was read, and it was arranged some way or other that he should take care of the money. About ten dollars was donated then and there by people in the meeting; that he had more time than any one else and some one had suggested that he take the money. Witness admitted his participation in the meeting of May 4th, but denied that he stated in New York that the money was

given him because he was about to leave Seattle. He denied stating in New York that he was present at a meeting when the distribution took place. He left Seattle on May 28th on the day his brother Joe was married in Tacoma. Witness left, together with Joe. Witness did not know that Wells had been arrested the day he left for the East. Asked by Mr. Reames as to what name he used after leaving Seattle, Morris Pass replied that he used his middle name, which in Hebrew, is Lev. In making the trip across the country he used the name Levine, to-wit, Morris Levine. His full name is Morris Lev Pass. He reached New York the 10th or 12th of September. He registered in Sandpoint, Idaho, under the Selective Draft Act on June 5, 1917, as Morris Levine. Being migratory, as he termed it, and intending to work from city to city enroute to New York, he gave his address as Butte or some other point in Montana. Cross-examined further by Mr. Reames as to a meeting held at the Socialist headquarters in the Epler Block two or three days before the Sunday when the circulars were distributed, witness admitted attending such a meeting, and that the meeting was held on about May 10th or 11th. He was asked whether it was the identical meeting the other witnesses testified about and he said they evidently referred to another meeting. Mr. Sam Sadler was present at this meeting in the Epler Block, as witness understood, some

other men from the Central Labor Council. He recalled that this meeting, among other things, was called to discuss the high cost of living, and that some pamphlets or circulars were on the table, but didn't know what they were and didn't know anything about their distribution—the circulars were not discussed at the meeting which he attended. He could not state whether Mr. Friermood or Mr. Welty were present at this particular meeting or not. Dave Lavine, the Government witness, attended this meeting, according to the witness' recollection. Asked as to the meeting referred to he stated that it was held in the Epler Block at the Socialist party headquarters on the third floor of that building.

He observed that the circulars were scattered about upon the table. He didn't know what the circular was about for he didn't read it, but understood that the circular was the same that the Government introduced as Plaintiff's Ex. 6. On Re-Direct Examination the witness stated that he arrived late and nothing was said about distribution after his arrival. This meeting was called, among other things, to protest against the high cost of living and the circular was not discussed. The only meeting the witness attended where the circular came up for discussion was the one held at the Good Eats Cafeteria. He had nothing to do with the preparation of the circular, its contents, its printing

or its distribution. Asked by counsel for the defense on Re-Direct Examination he stated that he was without counsel at the meeting in the office of the secret service at New York City and that the examining officer would say, "Omit that one," and "Take down this one," referring to the questions and answers and that the statement to which his attention was called by Mr. Reames did not accurately record what he said. Witness stated that he registered in Sandpoint under the Draft Act and kept in touch with his Local Board; that he filled out his Questionnaire and filed it, giving his name then as Morris Pass.

ON RE-DIRECT EXAMINATION by Mr. Bell, Morris Pass stated that none was present during the interview in the office of the secret service agents in New York City except the three secret service agents. He further stated that they were badgering him with questions. He was asked this question: "They were threatening you? A. Yes, sir.

Q. What did they say about putting handcuffs on you if you would not come peaceably?

A. When the detectives came to me first I asked if there was any warrant out against me. I said is there any reason why I should come? They said that they wanted to interview me. They showed me some handcuffs and they said which did I prefer to do, come peaceable or that the officers should

force me.

Q. Did you try to get counsel?

A. I did.

Q| Were you permitted to do so?

A. No, sir."

He further stated in response to questions by Mr. Bell, if he was ever asked to sign the so-called card. He replied "no, sir."

On RE-CROSS EXAMINATION Mr. Reames developed the fact that he had been arrested and was out on bail when he filled out his Questionnaire. Referring to the dates upon which the collection was made he said that the money for the circulars collected at the meeting on May 4, he delivered to Wells for the printing of the circulars after that. He attended a meeting subsequently when the circulars were present on the table. Witness did not recall that he saw Wells on the night he saw circulars on the table in his answer to Mr. Reames on Re-Cross Examination.

JOE PASS was next called for and on behalf of the defendants stated that he was one of the defendants; that his name was Joe Pass, that he was a brother of Morris and acquainted with defendants Sadler and Wells. He married on May 31, 1917, and left Seatte the day of his marriage. He recalled that he was present at a meeting in the Good Eats Cafeteria where there was some discussion of the proposed Conscription Act. He re-

called that the date was May 4th. His brother and Mrs. Wells were also present. He thought Sadler was there but at the time of trial was not sure. He had seen Sadler at a number of these Socialist meetings. Wells and his wife were there but he was not certain about Sadler. Asked as to what prompted him to attend the meeting he replied that on May 1st, International Labor Day, at a meeting in Stevens Hall, it was announced from the platform that a very important meeting was to be held at the Good Eats Cafeteria a few days later. The purpose of the meeting was not stated. He understood that the American Union against Militarism would hold the meeting, viz: that it would be held under the auspices of the American Union against Militarism or League against Militarism. Arriving at the meeting witness stated that he did not take any part in it at all. He ate various things during the dinner, remembered that a typewritten draft of a Conscription Circular was read. He did not remember who read it. He had come in late and was still eating when the discussion was taken up. He was engaged in conversation most of the time by the woman sitting at his right. He understood the purpose of the meeting to be to adopt a plan to agitate against the passage of the pending Conscription Act. According to the witness there was no suggestion at any time whie he was present that force be adopted to oppose the passage of this law,

or in fact any other law of the United States.

Witness testified as follows:

"Q. When you were asked your opinion of the circular what did you say?

A. I said I didn't like the language of the circular."

According to this witness, the particular language of the circular was not voted upon, nor adopted by the meeting and witness took no part in any voting by the members, if such took place, which, in fact, he did not recall.

DEFENDANT JOE PASS took no part in the collection, contributed nothing toward it, and did nothing in connection with the preparation of the circular. It was the first meeting the witness attended and the circular had already been reported upon. Witness attended no other meeting.

He first observed the circular in its printed form when it was found upon the front porch of his house. He also saw it in one or two other places in the city and read about it in the newspapers. He left the city two or three weeks after the circular had been published. Mr. Wells had been arrested just before he left the city. He first learned that the Government connected him with the matter after he had been in New York about ten days or two weeks.

He left Seattle on May 31st for New York, working at odd jobs from place to place en route.

He registered in Sandpoint, Idaho, under the name of Joe Levine.

In December after his arrest he filled out his questionnaire, notifying them at the time of his address, all under the name of Joe Pass. According to this witness, he thought that Sadler was present at the meeting in the Good Eats Cafeteria, but could not swear to it.

ON CROSS-EXAMINATION, he told Mr. Reames that he had not left secretly, but that he told of his purpose to go to New York to his brother Dave.

Witness' address in New York City was general delivery. He was arrested three or four weeks after his arrival.

Witness further on cross-examination stated that he attended a meeting of the American Union Against Militarism at the Good Eats Cafeteria quite awhile before the meeting on Friday night, May 4th. This meeting on May 4th was the only one which the witness attended. He was not present at the meeting in the Epler Block, when the matter of distribution was considered. According to his recollection, there were thirty-five or forty people present at the May 4th meeting. Someone read the typewritten draft of the circular at the meeting. He did not know who read it, nor who was the author of it, nor who stood sponsor for it. According to him, it seemed that a committee had been appointed at a

previous meeting for this purpose and that this committee on the night of the May 4th meeting was asked to report, which they did, with the leaflet in question.

He heard the entire draft of the circular read as he recalled. He was, however, engaged in talking to a woman sitting at the table beside him and did not pay very close attention to the reading.

Asked if he knew that it was the purpose of the meeting to plan on the distribution of the circular, he replied there was nothing spoken about it, although he presumed they were prepared to circulate, or rather, distribute, the circulars.

Witness is not a citizen of the United States, although he had resided within the United States for some fourteen years. He was asked by someone what he thought of the circular. He told the person that he thought the language very rash and it did not appeal to him as a literary critic.

Asked as to his ability to indulge in literary criticism, he stated that he had attended the public schools in Cleveland, Ohio; taken a preparatory course under the Y. M. C. A. auspices, which was equivalent to a high school course; had attended some special course in Columbia University.

Witness criticized the language and the expressions used.

Asked as to why he did not press his objections more forcibly, witness replied that he was not a

member of the organization and did not feel that he should take it upon himself to "butt in"—as he expressed it. He left about nine o'clock in the evening to meet the young lady with whom he was keeping company and whom he married on May 31st.

When he left the matter of distribution or printing had not been arranged for. He heard only the discussion concerning the circular. He did not recall whether the money was collected for printing and distribution at this time or not. He did not contribute, even if the subject was under discussion, which he could not recall.

Asked as to whether his brother, Morris, assisted in taking up a collection, witness could not say.

He raised no protest against the distribution of the circular, for the matter of distribution was not discussed while he was there.

Asked as to why he did not protest against the proceedings, he replied that he was not a member and did not feel that he should take part in the deliberations of the members present.

Defendant, SAM SADLER, was next called as a witness on behalf of defendant. He replied that he had known Mr. Wells about nine years and had known the Pass brothers for one and a half years. He had resided in Seattle during his acquaintance with Mr. Wells. He was a machinist by trade and had been connected with the Labor Union and So-

cialist party movement for a long time. He was never a member of the American League Against Militarism; was never in sympathy with it and never affiliated with a pacifist movement at all. He had no connection with the No-Conscription League; and the only two organizations which he was ever connected with were the Socialist party and the American Federation of Labor. He stated that he was not present at the meeting at the Good Eats Cafeteria when the circular (Plaintiff's Exhibit 6) was brought out for discussion. He admitted that he was present at the meeting in the Epler Block on May 11th. There were two or three meetings in progress on this occasion. As a delegate of the Longshoremen's Union he went up to the Labor Temple on Wednesday night when a communication was read by the secretary of the Socialist party, asking that delegates be sent to attend the meeting in the Epler Block on Friday night to arrange for a protest meeting or a parade to deal with the high cost of living.

Two or three others were selected with this witness, among whom were Friermord and Welty.

Arriving at the hall, he found the meeting in progress. He had nothing to do with the pamphlet or circular referred to as Plaintiff's Exhibit 6. Did not take charge of them. Had nothing to do with the collection of money for the purpose of printing them. Did not handle the money and had nothing to

do with the matter at all. He did not contribute any money for this purpose. His attention was first called to the circulars by the articles appearing in the newspapers and them saw the circular in question. The circular had at that time been distributed, for a printed extract from it was published in the P.-I. He also saw a copy of it in the Labor Temple on Wednesday following its distribution on Sunday. It was handed to him and he was asked if he had read it. He heard they had been distributed broadcast through the city, but did not get any of them.

At the meeting in the Epler Block there was a general discussion about holding a parade and getting out printed matter to advertise a big meeting somewhere. Several organizations had sent delegates. There was no talk about opposition to the Government or any law of the Government.

Witness had nothing to do with the No-Conscription League or its propaganda.

On CROSS-EXAMINATION by Mr. Reames, he replied that he had been married to his present wife ten years; that she was a Socialist worker, frequently speaking for the Socialist party and organized labor. He didn't know whether she ever spoke against militarism. He never attended any of her meetings, except some Socialist meetings. He never attended her in going from place to place, except he was with her on one trip to Los Angeles.

He attended a meeting in the Epler Block on the Friday preceding the distribution of the No-Conscription circular on Sunday morning. Messrs. Wells, Friermord, Welty, Rankin and David Levine were there. He could not recall the names of any other persons present. There were committees from several organizations present. There was no sergeant-at-arms at the door. The meeting was not polled and no one was vouched for. It was an open meeting at which anyone could attend. There was no suggestion made that there was any danger of the meeting being broken up by either the authorities or anybody else. Witness arrived about eight-thirty o'clock. Stayed about an hour. It was held in the headquarters of the Socialist party in the Epler Block.

Witness was asked if he was present at the time the resolution was adopted on May 23rd at the Labor Temple, replied he must have been there, but could not recall clearly about the meeting. It was a public meeting and he could not tell whether a roll call was had or not. He just happened to be in there. His attention was called to an alleged statement that Wells had made to the effect that Sadler had made a talk relative to the distribution of the circulars. He replied that he did not remember Wells' testimony, but that if Wells did make that testimony it was not true. There was nothing said at the Labor Temple meeting of May 23rd to

oppose the law. He had advised young men to register under the Draft Act. These two young men were Clarence L. Parks and George Zimmerman. He advised both of these persons about complying with the Draft Act before it had even passed.

Next witness in behalf of the defendant is CLARENCE L. PARKS, who stated that he had known Sam Sadler for eight years and that Sadler advised him to register. This was before the act became a law.

On CROSS-EXAMINATION, witness remembered that he made inquiry of Sadler about the proposed law.

Witness claimed exemption under his questionnaire upon the ground that he had a dependent family.

Conversation with Sam Sadler occurred before the law passed. There were other people standing around who heard the advice.

DAVID LEVINE was next called on behalf of the defendant. Testified that he had known Morris and Joe Pass all his life. He was born in the same city where they were. He knew about their intention to leave some eight months before they left Seattle. Was always talking about going to New York. Joe intended to study literature there. He knew they were about to leave somewhere about the first of June, but did not know the exact date.

Mr. Reames called his attention to a letter which he wrote under date of November 1, 1917, to Morris

and Joe Pass at New York City. He admitted signing and sending the letter to them, which letter showed him to be upon terms of familiarity with them and interested in arranging bail for them and looking after their welfare.

HELEN BARR PASS was next offered on behalf of the defendants. She testified that she was the wife of Joe Pass, having married him on May 31, 1917. Her husband leaving the same day for New York City. There was parental objection on both sides to witness' marriage to Joe Pass and it was kept secret. She knew that Joe had been planning to leave for New York for a long time, for a year at least. There was no secrecy about his purpose of leaving Seattle.

LEWIS BERG was next called as witness for defendants. Testified that he was a manufacturing jeweler in the City of Seattle and knew Morris and Joe Pass. Had been acquainted with them since early in the spring of 1917. He knew of the intention of these defendants to leave Seattle for New York some seven or eight months before they left. They made no secret about their purpose to leave Seattle. Morris intended to study art and Joe intended to go there for some literary work. Morris told him that in traveling he was frequently in the habit of using the name of Levine. Witness did not know of Joe's intention to use the name Levine. This witness did not write the Pass boys at their

general delivery address in New York. He learned their address through David Levine.

NESTA WELLS was next called for the defendants. She testified that she was the wife of defendant, Hulet M. Wells. Had been married nearly ten years. She attended two meetings of the No-Conscription League. The first about April 30th and the second on May 4th. On April 30th there were about twenty-eight or thirty people present. The sexes were about evenly divided. She went to the first meeting so that she could meet her husband, whom she knew would be there. Nothing was said about the use of force to oppose the laws or authority of the United States. She said these people were not an impulsive kind of people, but were calm, thoughtful and intelligent, and seemed to have a conscientious desire and longing for peace.

The proposed Draft Law was being discussed and the meeting was for the purpose of showing the people in Washington that they were fighting against it. There was no suggestion made by Wells to use force in the opposition of the enactment. Asked if defendant Sadler was there, witness did not think so. The first time she saw Joe and Morris Pass was at the next meeting. Witness remembered that Mr. Duncan was there, because he went out with her husband, and she thought Miss Strong was there also.

She said that she did not remember whether

any vote on the subject of this literature was taken or not, but that she did not vote if in fact a vote took place.

It was decided to circularize the city and the committee was selected to draft a pamphlet that would be sent out and distributed at the homes. The matter of holding meetings and parades was discussed. They decided they would not reach as many people, not so easy to handle, and would take more money.

The next meeting was on May 4th at the Good Eats Cafeteria. This was also an open meeting. Witness went there to meet her husband, Mr. Wells. She arrived at the close of the meeting, just in time to meet her husband, and she was not familiar with what occurred. She remembered that the two Pass boys were there, as was also Miss Strong. Nothing was said at this meeting by Mr. Wells about forcibly opposing the laws of the United States. She had never heard her husband counsel using force or anything of that kind against the authority of the United States. He believed, on the other hand, that the laws should be written after political thought and action, and Congresss hould be appealed to, in the matter of its proposed law.

Witness on cross-examination identified her husband's signature. She knew that he wrote the resolution.

At the April 30th meeting a collection was taken

up to defray the expenses of getting out the circular to oppose the passage of the Conscription Act. As to whether a committee was appointed she could not say. She did not know who wrote the cricular, only that her husband did not write it. She could not say whether the circular was read before she arrived, but supposed that it had been because Mr. Wells took it home with him.

Everybody was talking about the circular during the time that she was there. She was there when her husband took the circular from the table. She could not tell who had charge of it before he took it.

It was not a formal meeting, where you have presiding officers, but was simply an informal discussion following dinner at the cafeteria. The circular was upon a table upon which dinner had been served.

Asked by Mr. Reames as to how long the circular lay upon the table before her husband picked it up, witness replied that her husband was late, had just come in; that was then ready for printing.

Her husband picked up the manuscript, read it over, criticised the form of it in a discussion in which others joined, and then took it away with him. Joe and Morris Pass were recalled for further cross-examination by Mr. Reames to ask how soon after reaching New York were they arrested. They replied about three or four weeks.

Joe Pass was asked whether questions and an-

swers were put to him and answered in New York City in a secret service office, that were not brought out in the transcription. Joe Pass replied that there was one question that he was distinctly asked half a dozen times, to-wit: Whether he was present in the Epler Block when distribution took place. He told them no, and that this question was not contained in the transcript; that the secret service officers had cut it out.

Here the defense rested.

This was substantially all the evidence offered by the defense in support of this case in chief.

Plaintiff then offered FRANK B. GREENE, who testified that the statement made by witness Joe Pass that something had been taken out by the secret service operatives in New York was false.

This witness then said that Morris Pass said in New York that he was present when the circulars were divided up for distribution and volunteers came to the table and took them from time to time from the table. Wells was there in the earlier part of the distribution. Morris Pass took some of them.

Mr. Bell, on cross-examination, asked this question: "Morris Pass was interrogated with reference to the Epler Building meeting."

Mr. Greene replied as follows:

"If it is in the testimony; yes."

"Q. Haven't you any recollection of it?

A. No.

Q. None whatever?

I would like to examine this testimony. (Examining counsel looked at transcript.)

A. I may add that the Epler Block was not referred to by name."

At this point Mr. Reames offered the transcript as testimony containing the questions propounded to the defendant Joe Pass in the office of the U. S. secret service, together with his answers.

Mr. Bell objected on the ground that the witness should testify from his recollection and from that only, stating that he could have recourse to notes made at the time for one purpose only, viz., that of refreshing his memory, and that the witness could not make his own notes and then introduce them.

Mr. Bell argued that the question asked of the witness by Mr. Bell was whether his notes indicated any question propounded defendant Joe Pass upon the very matter which he was brought from New York for examination, and that the witness stated that they did not.

Mr. Bell then said his purpose was to show that this particular question was not asked of Joe Pass or that if said questions were asked they were eliminated from the transcript.

Thereupon, the court overruled Mr. Bells' objection and admitted in evidence the entire transcript of the testimony of Joe Pass in his exami-

nation in New York City, which witness testified contained the full, true and correct statement of all questions propounded to and answers made by him in the office of the secret service of the U. S. in New York City as Plaintiff's Exhibit 11.

Thereupon Mr. Bell, for the defense, took an exception which exception was allowed.

Mr. Bell further offered to cross-examine witness concerning the transcript ,which had then been offered in evidence, stating particularly that Joe Pass had been asked on the witness stand, while testifying for the defendants, whether or not he had been interrogated in New York City as to the meeting at which the circulars were distributed in the room in the Epler Block on May 11th. That a number of questions were put to him and answers given in response.

Mr. Bell then asked Mr. Greene (the Plaintiff's Rebuttal Witness) whether the transcript showed that these particular questions were asked the defendant, Joe Pass, while in New York. Witness replied that the transcript did not. Mr. Bell then stated in his judgment that should settle the matter.

Mr. Bell then offered to show by the witness, Greene, that Joe Pass was interrogated in New York in regard to the first meeting held in reference to the circular, but that the record fails to show that he was interrogated with reference to the sec-

ond meeting where the circulars were brought and distibuted.

The court then stated that the transcript would speak for itself. It would show what was in the record and what was not in it and refused to allow Mr. Bell to cross-examine the witness concerning the transcript. Mr. Bell then took an exception to the court's rejection of his offer.

Thereupon Mr. Bell moved for a directed verdict of not guilty for all of the defendants. In reply the court remarked:

"Let the record show a motion for directed verdict for all the defendants is denied and exception allowed."

Thereupon, both sides rested.

This was substantially all the evidence offered by the parties.

Within the time limited by the rule of the court for the presentation of requests for instructions and in the presence of the jury the defendant requested the court to give to the jury as instructions all of the instructions that had been theretofore requested by the defense at a former trial in case No. 5671, entitled "The United States of America vs. Hulet M. Wells, R. E. Rice, Sam Sadler and Aaron Fislerman," insofar as such requested instructions should be applicable to the present case, considering the difference in the indictments, and it was agreed between the Government, the de-

fense and the court that such request should be deemed and taken by all as a sufficient request for the giving of said instructions.

The following are the instructions requested by the defense in said case No. 3671 and referred to above, to-wit:

"United States District Court, etc., No. 3671.

Instructions Requested by Defendants.

INSTRUCTION NO. 1.

I instruct you to find the defendant, Hulet M. Wells, not guilty.

INSTRUCTION NO. 2.

I instruct you to find the defendant, R. E. Rice, not guilty.

INSTRUCTION NO. 3.

I instruct you to find the defendant, Sam Sadler, not guilty.

INSTRUCTION NO. 4.

I instruct you to find the defendant, Aaron Fislerman, not guilty.

INSTRUCTION NO. 5.

I instruct you to find the defendants not guilty under Court 1 of this indictment.

INSTRUCTION NO. 6.

I instruct you to find the defendants not guilty under Count III of this indictment.

INSTRUCTION NO. 7.

I instruct you to find the defendants not guilty under Count V of this indictment.

INSTRUCTION NO. 8.

The first element of the crime of conspiracy, namely, the conspiring together, confederating together or agreement together is one of the essentials of the crime. By this is meant an intelligent, mutual agreement or understanding to co-operate for the purpose of carrying out some pre-conceived plan. There must be some agreement to co-operate, there must be some meeting of the minds of the conspirators. Each of the conspirators must know that the other conspirator is going to do something to accomplish the end of the conspiracy. Mere knowledge that another or others are about to commit or about to attempt a crime, will not make one a conspirator. The mere haphazard doing of acts by persons acting independently does not constitute a conspiracy even though the acts done may tend to one end and even though each person may know of the other's act.

INSTRUCTION NO. 9.

I instruct you that the first count of the indictment in this case charges that the defendants conspired in violation of the provisions of Section 37 of the Penal Code of the United States to violate the provisions of Section 211 of the Penal Code of the United States as amended by Section 2 of the Act of March 4th, 1911. Section 37 referred to provides that whenever two or more persons shall conspire * * * to commit an offense against the United

States and one or more of said persons shall do any act to accomplish the purpose of said conspiracy shall be guilty, etc.

Count 1 of the indictment, insofar as it is material for your consideration, charges that on the 1st day of May, 1917, the defendants did conspire to print and distribute throughout the City of Seattle, a certain printed publication referred to as a "No Conscription" circular with the intention that the persons receiving the same should knowingly deposit and cause the same to be deposited for mailing, and knowingly take and cause the same to be taken from the United States mails, and it is alleged that said "No Conscription" circular was of a character that would incite arson, murder and assassination.

In a word this count of the indictment charges a conspiracy to use the mails in violation of the statutes I have heretofore quoted, prohibiting the mailing or receiving of certain non-mailable matters. The entire jurisdiction of the United States Government and of this court depends upon the question whether in planning to circulate or distribute the pamphlet in question, the defendants intended that the mails should be employed. If you have a reasonable doubt upon this point, as I shall hereafter define the term, I instruct you that you must find the defendants not guilty on count one, notwithstanding you may believe they planned to cir-

culate and distribute the pamphlet in question by other means.

INSTRUCTION NO. 10.

I instruct you that Count I of the indictment charges that the defendants conspired to cause other persons to deposit in the mails and take from the mails, a certain circular which has been designated as the "No Conscription" circular. This is the issue upon which must be determined the question of the defendants' guilt, or innocence. In determining this issue you will not consider at all the question whether it was contemplated or planned that certain other letters, books, pamphlets or papers should be so deposited in or received from the mails. There is no sufficient charge in the indictment that any other letters, books, pamphlets or papers of an indecent character were to be deposited or taken from the mails, neither is there any evidence of such a plan, and so I want to caution you particularly that you will not even consider whether such a plan existed, and unless you find from the evidence in the case beyond a reasonable doubt that the defendants or some of them planned and intended that this particular circular should be deposited in or taken from the mail, you will find the defendants not guilty.

INSTRUCTION NO. 11.

I instruct you that Article I of the Amendments to the Constitution of the United States provides

that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for redress of grievances." That one of the inalienable rights of every American citizen which even the Congress of the United States is powerless to abridge is the right to peaceably assemble and petition Congress or individual representatives in Congress upon any matter of legislation whether the same be still pending and under consideration by that body, or whether the same shall have been finally passed and enacted into law, and whether the purpose of the petition be to defeat the passage of such act or to secure its amendment or repeal, and under no circumstances can the exercise of this right in good faith be considered criminal or even unlawful. It is likewise the inalienable right and privilege of all persons whether they act singly or collectively, to speak and write freely upon all questions of public importance and in so doing they are fully protected by the provisions of the Constitution I have just quoted, so far as you are concerned with the question in this case, so long as they do not advocate, advise or encourage the use of force in hindering, opposing or delaying the exercise of some existing law of the United States, or do not advocate, advise or encourage forcible opposition to the

authority of the United States under such existing law.

It is extremely important that throughout all your deliberations in this case you should bear this point clearly in your minds. It is the policy of our law to permit at all times, and in all places, and under all circumstances the free discussion of all public questions, providing only that such discussion does not partake of the nature of advice or encouragement to resit existing law or existing authority, and neither the pendency of war nor any consideration of public necessity or patriotic duty can in any manner curtail or abridge this right of free discussion and free assemblage.

INSTRUCTION NO. 12.

I instruct you that the introduction on the 23rd day of May, 1917, before the Central Labor Council of the City of Seattle of the resolution which is set out in the indictment in this case was an ordinary exercise of the right of free speech and peaceable assemblage guaranteed to every person by the Constitution of the United States, and that you will not consider the same as in any sense unlawful or treat it as an overt act committed in pursuance of any unlawful conspiracy.

INSTRUCTION NO. 13.

I instruct you that the preparation and distribution of the "No Conscription" circular referred to in the indictment herein occurring prior to the final

passage of the Conscription or Selective Service Act on May 18, 1917, was not a violation of that act, nor did the preparation and distribution of said circular amount to a conspiracy to violate said act or to forcibly hinder, delay or oppose its execution because all of said acts preceded the passage of the act in question and as a matter of law a man cannot be guilty of conspiring to violate an act of Congress until after the same has been passed and approved and become a law.

INSTRUCTION NO. 14.

I instruct you that you will find the defendants not guilty under Count V of this indictment unless you find from the evidence in this case and beyond a reasonable doubt that after the 18th day of May, 1917, some two or more of said defendants conspired, confederated and agreed to induce others by force to hinder, delay and oppose the execution of the so-called "Conscription" or Selective Service Act.

INSTRUCTION NO. 15.

I instruct you that prior to the 18th day of May, 1917, neither the President of the United States nor any other person or body had any authority to call into the service of the United States or to organize the unorganized militia of the United States. The authority to organize and call such militia into service is vested by the Constitution of the United States solely in Congress and until

the 18th day of May, 1917, Congress had not exercised such authority. Prior to that date the only military forces which the President or any other officer of the United States had authority to call into service or to organize or direct in any manner were the regular naval forces, the regular army and the National Guard, and unless you believe from the evidence in this case beyond a reasonable doubt that it was the purpose of the defendants or of some one of the defendants acting in collusion and conspiracy with some other persons unknown, to forcibly oppose the authority of the Government in organizing and directing the regular naval forces, the regular or the National Guard, you will find all the defendants not guilty under Count III of the indictment.

INSTRUCTION NO. 16.

You will observe that in Count III of the indictment and more particularly on page 15, it is charged that the defendants conspired by force to oppose the authority of the United States and of the President of the United States in carrying into effect the provisions of the laws then existing relating to the armed military and naval forces, and such other laws as might thereafter be enacted in pursuance of the joint resolution of Congress declaring war. In this connection I wish to caution you that you cannot consider whether it was the purpose of the defendants or any of them, to pre-

vent, hinder and delay the execution of any law that had not yet been enacted, or to oppose the authority of the Government or of the President under anw law not yet enacted, for the reason that I have already explained, that a man cannot be guilty of a conspiracy to violate or obstruct or oppose laws which have not yet been enacted, nor can he be guilty of conspiring to oppose authority which has not yet been conferred; and so in determining the question of the defendants' guilty or innocence you must ignore entirely any statute, whether pending in Congress or not, which had not been finally enacted into law at the time the conspiracy is charged to have existed. More specifically, unless you find that a conspiracy existed between two or more of these defendants after the 18th day of May, you will entirely disregard and eliminate from your consideration in this case the Conscription or Selective Service Law, and you will not even consider the question whether the defendants or any of them, designed and intended to interfere with the operation and execution of such law.

INSTRUCTION NO. 17.

I instruct you that the Constitution and laws of the United States provide for two distinct kinds of military forces. The first is the regular paid, or professional soldier, such as is found in our regular standing naval and military forces; the second is known as the militia, which comprises the National

Guard and all other male citizens between the ages of 18 and 45, which are unorganized and known as the unorganized militia.

The Constitution of the United States provides that the militia, whether organized or unorganized, may be called forth by Congress only for the three following purposes: First, to execute the laws of the Union; second, to repress insurrection; and third, to repel invasions. The law makes no provision for calling forth the militia, whether organized or unorganized in a foreign war, and if it was the purpose of the so-called Conscription or Selective Service Act of May 18th to provide a body of troops for service in a foreign war and outside of the United States, then such law was unconstitutional and void. A void law is no law and is not entitled to either respect or obedience, and no person can be guilty of violating such a law or conspiring to violate the same.

INSTRUCTION NO. 18.

I instruct you that unless you find beyond a reasonable doubt that some two or more of the defendants after the 18th day of May, 1917, conspired to prevent, hinder and delay by force the execution of the Selective Service Act, or conspired to oppose by force the authority of the United States under that law, you will find the defendants not guilty on all the counts of this indictment.

INSTRUCTION NO. 19.

Every person accused of crime is presumed in law to be innocent of the crime charged until his guilt is proven by competent evidence to the satisfaction of the jury and beyond all reasonable doubt. This presumption is not a mere fiction which a jury may lightly disregard, but is a substantial right accorded by law to protect the innocent from unjust and unfounded accusations. It accompanies the defendant throughout the trial of the entire case. It follows therefore that you have no right to draw any inference of guilt from the fact that the grand jury has returned an indictment against these defendants, nor will you form your opinions of guilt or innocence as the evidence is being introduced during the trial, or util all of the evidence has been presented on both sides, and until you have been instructed by the court upon the law of the case, and you have finally retired to your jury room to deliberate upon your verdict.

INSTRUCTION NO. 20.

As I have already instructed you, the defendants in this case are presumed to be innocent until the contrary has been shown to your satisfaction beyond a reosonable doubt. It is not incumbent upon the defendants to prove their innocence. The burden rests upon the Government to prove their guilt. This burden never shifts to the defendant, and unless the Government has astisfactorily met

this requirement as to each defendant, the jury will acquit such defendant.

INSTRUCTION NO. 21.

I instruct you that in a criminal action you cannot base conviction upon mere probabilities, but before you can find any defendant guilty you must be satisfied of guilt beyond all reasonable doubt.

INSTRUCTION NO. 22.

In a criminal case it is not sufficient that the Government should prove its case by mere preponderance of the evidence, nor is it necessary, on the other hand, that it should prove its case positively and beyond all doubt. The law requires, however, that the Government should prove every material issue to your satisfaction and beyond all reasonable doubt. The expression "reasonable doubt" means in law just what the words ordinarily imply. To be reasonable, a doubt must be founded upon reason. In deliberating upon the evidence in this case you should not search for reasons for conviction, neither should you look for reasons for an acquittal. You will confine your deliberations solely to the evidence that has been admitted for your consideration. This evidence you will consider in the light of the instructions given you by the court. Ignoring all other things and disregarding all prejudices you should attempt fairly, conscientiously and honestly to ascertain the truth about the matters alleged in this indictment and if at the end of

your deliberations you have a reasonable doubt concerning any of the material matters alleged in the indictment, it will be your duty to acquit the defendants.

INSTRUCTION NO. 23.

Evidence is either direct or positive, or presumptive and circumstantial. When a witness testifies directly to the facts constituting the crime the evidence is said to be direct and positive. When he testifies to facts and circumstances having only an indirect relation to the facts constituting the crime, the evidence is presumptive and circumstantial. The commission of a crime may be proven either by the direct testimony of eye witnesses, or by circumstantial evidence; but when circumstantial evidence is relied on for a conviction, the circumstances should be consistent with each other. They must all be consistent with the defendant's guilt; and they must be inconsistent with any reasonable theory of the defendant's innocence. Evidence purely circumstantial in character which does not exclude every reasonable and rational theory of the defendant's innocence cannot, as a matter of law, be convincing beyond a reasonable doubt.

INSTRUCTION NO. 24.

Evidence has been received of the good reputation of the defendants for peace and quietude and as law-abiding citizens. You should consider such evidence, together with all of the other evidence in

the case, in arriving at your verdict; and if from such evidence you have a reasonable doubt concerning the defendants' guilt you should acquit.

INSTRUCTION NO. 25.

I instruct you that when you retire to consider your verdict in this case you must consider separately the evidence against each defendant and consider separately the question whether each defendant is guilty or innocent, and if you have a reasonable doubt about the guilt or innocence of any defendant, it will be your duty to find such defendant not guilty.

INSTRUCTION NO. 26.

I instruct you that you are the sole and exclusive judges of the facts of this case and of the credibility of the witnesses who appear before you. If, in the course of the trial, in ruling upon objections to evidence or upon motions made by counsel, the court may seem to you to have expressed an opinion upon any fact in this case, you will entirely disregard such matter. The court as such has no opinions about the facts and has not intended to express any. In determining the amount of credit which you will give to the testimony of the various witnesses who have appeared before you, you will consider their demeanor upon the witness stand; their apparent candor and fairness, or lack of it; the opportunities which they may have had for knowing the facts concerning which they have testi-

fied. You will be slow to believe that any witness has deliberately testified falsely, but if you do so believe, it will be your duty to entirely disregard the testimony of such witness, except insofar as the same may be corroborated by other credible evidence in the case.

INSTRUCTION NO. 27.

You will disregard entirely the fact that the defendants have made a motion for a directed verdict in their favor. In ruling upon this motion the court has not even considered whether the defendants, or any of them, were guilty or innocent. Again, I want to caution you that the court has no view upon this question and has not expressed any view in passing upon this motion. It is the court's province to pass upon, and instruct you regarding, the law in the case; and it is your province to decide the facts.

INSTRUCTION NO. 28.

In arriving at your verdict, you should consider separately the question of the guilt or innocence of each of the defendants charged; and if you have a reasonable doubt as to the guilt of one of the defendants, it is your duty to return a verdict of not guilty as to such defendant.

Except as the same be incorporated in the general charge of the court to the jury, the court refused to give any of said requested instructions to the jury, and to each separate refusal the defense asked and was allowed a separate exception.

Explanatory Note.

In cause No. 3671 there were four defendants, to-wit: Hulet M. Wells, Sam Sadler, R. E. Rice and Aaron Fislerman. The indictment therein contained five counts charging said defendants with the commission of offenses as follows: Count I, conspiracy to violate Section 211, Penal Code; Count II, conspiracy to violate Section 211, Penal Code; Count III, a violation of Section 6, Penal Code, by conspiring to prevent, hinder and delay the execution of the joint resolution of Congress approved April 6, 1917, declaring a state of war to exist, and the laws relating to the armed forces of the United States and appropriate for executing the said declaration of war, and to oppose by force the authority of the President in executing said law; Count IV, charged seditious conspiracy under Section 6, Penal Code, substantially the same as the charge set forth in Count III; Count V, charged seditious conspiracy under Section 6, Penal Code, to prevent, hinder and delay the execution of the Selective Service Law approved May 18, 1917. By appropriate proceedings and action counts one, two and five were withdrawn from the consideration of the jury and the case was submitted to the jury upon one count, to-wit: Count III. A verdict of "not guilty" was rendered as to the defendants R. E. Rice and Aaron Fislerman. The jury disagreed as to defendants Hulet M Wells and Sam Sadler.

The indictment in cause No. 3797 is in two counts, and sets forth substantially the charge embodied in Count III of the indictment in cause No. 3671. The transactions involved and the overt acts charged are substantially the same in cause No. 3671 and in cause No. 3797. In the last named case were included two other defendants, Morris Pass and Joseph Pass, who had not been defendants in cause No. 3671.

After the arguments of counsel, the court charged the jury as follows:

"By NETERER, Judge:

GENTLEMEN OF THE JURY: The issue to be determined in this case is one of great importance to the Government and to the defendants, and requires your careful consideration. Each party in this case has examined you with relation to prejudice, preconceived notions, of this issue, and you have convinced both sides that you are free from any prejudice and can determine this issue solely upon the evidence which has been presented, and both sides have a right to rely upon this conception of your qualifications; and I have no doubt that you will eliminate from your minds every element which would have a tendency to detract from the issue and will concentrate your thought alone upon the determination to do justice and right, as your quickened conscience, aroused by the serious duty before you, may dictate, your every thought

and effort being divorced from passion, prejudice, sympathy, or sense of relation to things which might detract your thought from the real issue in this case, and that is the guilt of innocence of the defendants, and by a fair, honest and conscientious consideration conclude, so that the Government and the defendants may feel that fair and honest consideration has been given to the matter in hand.

You can readily understand that the Government can only be maintained by the enforcement of the law. You, as jurors, are not concerned with the policy of the law. You are simply concerned with the facts as applicable to the law which has been passed by Congress. You appreciate that if the Congress, the law-making body, enacts a law defining a particular policy or rule of conduct, it believes it to be to the best interest and welfare of the country; and if people should decline to fairly and honestly live up to the law or discharge their duty by enforcing the law, that it would only be a short time until a condition of anarchy would obtain and no stable government could be maintained. On the other hand, you are instructed that the Government does not desire to have a jury conclude against a person on trial unless the conclusion is supported by the evidence. In other words, the Government does not desire to have an innocent man convicted. It is just as much interested in having an innocent man acquitted as it is in having

a guilty man convicted; but it does not want a guilty man to escape when the testimony shows beyond a reasonable doubt that he is guilty. So jealous is the Government of the liberty of a party charged with an offense, and so interested in the innocence of parties, that the law surrounds every man charged with an offense with the presumption of innocence until he is proven guilty, and also places upon the Government the burden of proving a party guilty beyond every reasonable doubt.

The gist of the offense charged is a conspiracy entered into on or about April 25, 1917, by force to prevent, hinder, or delay the execution of the law of the United States.

A conspiracy is defined as a combination or confederation of two or more persons, by concerted action, to do an unlawful thing, or to do a lawful thing in an unlawful manner; and the indictment charges the doing of overt acts in furtherance of the conspiracy, or some act for the purpose of carrying out the conspiracy. In other words, if you should find a conspiracy was entered into as charged, and that some one of the defendants or some persons unknown, disclosed by the evidence, who entered into the conspiracy, did some overt act in furtherance of it, then all of the defendants who entered into the conspiracy or became party to the conspiracy after it was formed, would be guilty. To make the statute clearer if possible, I will state the

three essential elements: First, the conspiring together of two or more persons, that is the element of intelligent, mutual agreement or understanding to co-operate for the purpose of carrying out some preconceived plan; second, to commit the offense charged, which in this case is to prevent, hinder or delay the execution of the law of the United States as charged in the indictment; and, third, the doing of what is termed the overt act, or the element of one or more of the defendants doing one or more of such acts to effectuate the objects of the conspiracy. The common design is the essence of the charge, and while it is necessary to establish the conspiracy to prove the combination of two or more persons to accomplish the unlawful purpose and that there was a confederation and agreement together and a preconceived plan, it is not necessary that two or more persons should meet together and enter into a written agreement or a definite verbal understanding or that they should formally in words or writing state what the unlawful scheme was to be or the general understanding or detail or plan or means by which the unlawful combination was to be effected or the part each was to play. It is sufficient if two or more persons in any manner positively or tacitly come to a mutual understanding to accomplish a common unlawful preconceived design or purpose, and if they proceed on such mutual understanding, each to participate in some manner, al-

though in a very minor way, and proceed to carry out the preconceived plan, and the acts of the parties so dovetail and fit together that the conclusion is inevitable that there was an understanding between the parties as to the thing to be done and the statute to be violated, a conspiracy would be established. In other words, where an unlawful object is sought to be effected and two or more persons, actuated by a common purpose and pursuing a preconceived plan to accomplish such purpose, should work together in any way in furtherance of the unlawful scheme, every such person participating is a party to the conspiracy, no matter what part he takes in the execution of the object and plan; and where several persons are proven to have combined together for the same illegal purpose, any act done by any one of the parties in furtherance of the original concerted plan and with reference to the common object, is, in the contemplation of the law, the act of the whole party, and any declaration or statement made by one of the parties during the pendency of the illegal enterprise is not only evidence against himself, but is evidence against the other parties, who, when the combination is proven, are as much responsible for such declaration and the acts to which it relates, as if made or done by themselves. You are further instructed that a party who comes into a conspiracy, as I have stated, after it is formed, with a full knowledge of the object and purposes,

and aids in carrying out the original design, thereby adopts all of the acts done prior to that time, and is as much a member of the conspiracy as though he had entered it from the beginning.

The indictment in this case contains two counts, but only one offense is stated. These counts will be considered by the court as one offense or consolidated into one and so treated.

The particular charge is that the defendants conspired to oppose by force, and to prevent, hinder, and delay the execution of a joint resolution of Congress declaring a condition of war to exist between this country and the Imperial German Government, and the National Defense Act and other acts set out in the indictment.

You are instructed that on the 6th day of April, 1917, the Congress of the United States passed a resolution in which it was stated:

"That the state of war between the United States and the Imperial German Government which has thus been thrust upon the United States is hereby formally declared, and that the President be, and he is hereby, authorized and directed to employ the entire naval and military forces of the United States and the resources of the Government; and to bring the conflict to a successful termination, all the resources of the country are hereby pledged by the Congress of the United States."

Prior to the passage of this resolution, the

Congress had likewise passed what is called the National Defense Act, of June 3, 1916, Section 57 of which provides that:

"The militia of the United States shall consist of all able-bodied male citizens of the United States and all other able-bodied males who have or who shall have declared their intention to become citizens of the United States, who shall be more than eighteen years of age, and, except as hereinafter provided, not more than 45 years of age, and said militia shall be divided into three classes, the national guard, the naval militia, and the unorganized militia."

And by the same act, by Section 79, it is provided that:

"If for any reason there shall not be enough voluntary enlistments to keep the reserve battalions at the prescribed strength, a sufficient number of unorganized militia may be drafted into the service of the United States to maintain such of the said battalions at the proper strength."

The law likewise makes it the duty of the President, whenever the United States is in danger of invasion from any foreign nation, to call forth such number of the militia as may be deemed necessary by the act of January 21, 1903, as amended May 27, 1908 (U. S. Compiled Stat., Vol. 4, page 4296), to which I have just referred. To concisely state the law, then, on the 25th day of April, Congress had

declared the existence of a condition of war and directed the President to employ the entire naval and military forces of the United States and the resources of the Government to carry on the war against the Imperial German Government. At this time the law provided for distinct military and naval forces: First, the regular standing army and the military forces, and, second, the male citizens of the United States between eighteen and forty-five years of age, classified into the National Guard and Naval Militia and Unorganized Militia, and further provided for the drafting of a sufficient number of the unorganized militia into the service of the United States where there were not enough voluntary enlistments to keep the reserve battalions at the prescribed strength.

This conspiracy, if any was formed, cannot be brought forward and made to offend against the Conscription Act of May 18, 1917. The issue is whether the defendants did conspire to oppose by force and to prevent, hinder and delay the President of the United States in carrying out this resolution of Congress under the law as it existed at the time charged in this indictment and prior to the 18th day of May; and in considering this you will take into consideration all of the evidence which has been offered and admitted, and if you are convinced beyond a reasonable doubt that the object and purpose of the defendants was by force to pre-

vent, hinder and delay the President in employing the entire naval and military forces of the United States in the prosecution of the war against the Imperial German Government as charged, then the defendants who participated in such conspiracy would be guilty; and in this connection you will have in mind the power and authority to secure enlistments from the unorganized militia and the power to draft into the service of the United States from the unorganized militia a sufficient part to maintain the battalions at the proper strength.

If you believe or if you have reasonable doubt as to whether the "No Conscription" circular set out in the indictment and admitted in evidence did not purpose to oppose by force or incite others to oppose by force and hinder and delay the President in the execution of the joint resolution of Congress, then, of course, you will not consider it in that connection. But if you believe beyond a reasonable doubt that the purpose and effect of the circular was to incite others by force to oppose, hinder and delay the execution of such resolution, then such defendants who entered into such conspiracy would be guilty. In this connection I think I should say that the defendants are presumed to know the law and cannot shield themselves behind ignorance of the law. The law requires that all persons know what the law is. You are also instructed that every person is presumed to intend the natural conse-

quences or results of his acts deliberately or knowingly done.

As stated, the indictment charges the defendants with conspiring to oppose by force the authority of the United States, and to hinder and delay the execution of its laws. You are instructed that this is an element which must be established by the testimony on the part of the Government by the same degree of proof.

Force need not be actual physical force manifested by the defendants, but must be such conduct, either acts, statements, invitations or solicitations, the evident purpose of which is to incite others to the use of forcible resistance in hindering or delaying the Government of the United States in the execution of its laws. It is not essential that the object of the conspiracy should actually have been accomplished, or that force should actually have been used. Nor is it essential that the conspirators should have agreed upon the precise method of employing force or the weapons or instruments of such force. If a conspiracy was formed and the use of force was the natural or necessary means of accomplishing the object of the conspiracy, and if its use was necessarily incident to the carrying out of the plan of the conspiracy, whether that force should be used by the defendants or only by those persons who should be induced to co-operate with them, then the defendants would be guilty of the offense

charged. Nor can the effect of the circular be neutralized or limited by any motive or purpose or intent not communicated with the circular. Nor could what Webster or anyone else said enter into this issue or limit the effect of the circular, if the natural and reasonable conclusion to be deduced from the circular in evidence and what was done with it was to incite by force opposition to the law of the United States as charged. I think I should say in this connection, in view of the suggestions during the trial and argument, that you are not concerned in this case whether the war is right or not. We are at war now. There are only two sides to the war. One side is in favor of this country; the other side is against it. The policy of the Government has been declared and established, and no person can by force do anything that will hinder or delay the Government in carrying out that policy set out and defined in the resolution referred to in the indictment. The defendants are not charged with being against or in favor of the war, but with conspiracy by force to oppose, hinder or delay the Government of the United States in the execution of the resolution passed by the Congress with relation to the war and in carrying it to a successful termination. I think I should further say that Socialism or the Socialist party is not on trial in this cause; nor the Peace Society to which reference has been made in this trial, as such. The defend-

ants have a right to belong to the Socialist party or to the Peace Society referred to, and to advocate the doctrines of those organizations by lawful means; but they have no right under the name of either organization or under the guise of aiding either, or otherwise, to combine by force to hinder or delay the Government in the prosecution of the war. Nor is the mere fact, if such is established, of an innocent spectator at any meeting disclosed by the testimony where any matters were considered or discussed with relation to the circular or to any co-operation or conduct of any of the defendants or of the charges made, who did not participate in any of the proceedings or activity in carrying out the design and purpose of the scheme, if one was agreed upon—such parties, if there were such of the defendants, would not be guilty of the offense charged.

In this case, if you believe from the evidence or have a reasonable doubt as to whether the defendant Jos Pass or the defendant Sadler were mere innocent spectators and casual visitors at a meeting or meetings where the circular in evidence was considered and discussed and disposed of, and had no further interest or participation in the carrying out of any design or plan, if you find that one was agreed upon, and these parties or either of them did nothing to further the enterprise, such presence without any further interest or activity would not be sufficient to connect them with the con-

spiracy, if you find from the evidence one was formed by either of the defendants. You will consider all of the evidence with relation to each of the defendants with a view of determining just what connection, if any, they had with the charge made, and the activity of each in forwarding the plan or scheme, if you find one was formed.

If you believe from the evidence that a conspiracy was formed by Wells or by Morris Pass or by Wells and others disclosed by the evidence, and that after the formation of this conspiracy the defendants Sadler and Pass, if they were not present at the meeting or not members of any confederation or conspiracy, if you find one was formed, but afterwards either or both joined such conspiracy with full knowledge of its purposes, then they would be as guilty as though they have been members of the conspiracy from the beginning.

In deliberating upon the charge in the indictment, you will take into consideration the law which was then in force as already defined to you, and the authority and direction given to the President of the United States by Congress, and the testimony which has been offered and admitted as to what the defendants did, what they said, what effect what they did and what they said would have upon others in the relation disclosed by the testimony, having in mind the persons among whom the circular was distributed and the effect

it would likely have upon such persons as are disclosed by the evidence in this case. In this connection you are instructed that persons are not denied the right of petition, freedom of speech, or the right of peaceable assemblage. These are rights which are inalienable, and if exercised within the provisions of the law they can not be denied. The defendants had the right of freedom of speech and lawful assemblage and to petition Congress or to do anything to alleviate any grievances, so long as they did not advocate or advise or encourage the use of force in opposing, hindering or delaying the execution of the law of the United States as charged in the indictment. The defendant Wells had a right to address Dr. Strong's church, as testified to by one of the witnesses. He had a right to do or say anything in advocating the repeal of the law or its amendment, to write to Congressmen and to induce others to write to Congressmen, so long as he acted within the provisions of the law. But in this indictment he is charged with acting without the provisions of the law, and that is the issue which is now before you. All citizens are free to express their views on all public questions so long as they are actuated by honest purposes and not for the purpose of transgressing the rights of others, the laws of the state, or obstructing by force the execution of the laws of the United States; but no person has a right

to convert the liberty of speech into a license or to carry it to a point where it interferes with the due execution of the law, where his opposition is not honest, and where he is not actuated by an intention of expressing his views, but is manifested by an intent to violate the rights of others or the laws of the United States. A person may say or do anything not in itself unlawful to prevent the passage of a law or to secure the repeal of one already passed, but after a law is passed it is every man's duty to conform his acts in accordance with the provisions of the law, and he may not for the purpose of creating sentiment against the wisdom of the law do anything with intent to procure the violation of the law by force in his advocacy of its unwisdom or for the purpose of repeal.

The law with relation to the freedom of speech was recently commented upon by another judge (Judge Wolverton) which I fully approve. In referring to the constitution, he says:

"That instrument does decleare that Congress shall make no law abridging freedom of speech. The guarantee is a blessing to the people of this Government, and great latitude is preserved to them in the exercise of that right. But a citizen may not use his tongue or his pen in such a way as to inflict legal injury upon his neighbor or another. Nor has any person the right, under the guarantee of freedom of speech, to shape his language

in such a way as to incite discord, riot, or rebellion, because such action leads to a breach of the peace, and disturbs good order and quietude in the community. Nor is he privileged to utter such language and sentiment as will lead to an infraction of law, for the laws of the land are designated to be observed, and not to be disregarded and overridden. Much less has he the privilege, no matter upon what claim or pretense, so to express himself, with wilful purpose, as to lead to the obstruction and resistance of the due execution of the laws of the country, or as will induce others to do so. A citizen is entitled to fairly criticise men and measures; that is, men in public office, whether of high or low degree, and laws and ordinances intended for the government of the people; even the constitution of his state or of the United States; this with a view, by the use of lawful means, to improve the public service, or to amend the laws by which he is governed, or to which he is subjected. But when his criticism extends, or leads by wilful intent, to the incitment of disorder and riot, or to the infraction of the laws of the land or the constitution of this country, or with wilful purpose, to the resistance and obstruction of the due execution of the laws by the proper authorities, it overleaps the bounds of all reasonable liberty accorded to him by the guarantee of the freedom of speech, and this because the very means adopted is an unlawful exercise of his privilege."

In this case you will consider the guilt or innocence of each of the defendants separately with a view to determining their guilt or innocence, and the burden, as I have stated, is upon the Government to establish the material allegations of the charge in the indictment beyond a reasonable doubt.

The term "reasonable doubt" means in the law just what the words ordinarily imply. It means a doubt for which you can give a reason. It is such a doubt as a man of ordinary prudence, sensibility, and decision in determining an issue of like concern to himself as that before the jury to the defendants, which would make him pause or hesitate in arriving at his conclusion. But such a doubt should be entertained only from the want of such evidence to satisfy you beyond every reasonable doubt, or a doubt which is raised by the evidence itself, and should not be merely speculative, imaginary, or conjectural. A juror is satisfied beyond every reasonable doubt if from a candid consideration of the entire evidence which has been offered and admitted, direct and circumstantial, he has an abiding conviction of the truth of the charge made. When a juror is satisfied to a moral certainty of the guilt of the party charged, then he is satisfied beyond a reasonable doubt.

In this case in deliberating upon the evidence you will not search for reasons for acquittal nor look for reasons for conviction. You will confine

your deliberations solely to the evidence which has been admitted for your consideration, and this you will consider in the light of the instructions given you, ignoring all other things and disregarding all prejudice, and give the issue fair, honest conscientious consideration with a view of determining what the truth is with relation to the charge made.

Evidence, as you may have inferred, is either direct and positive or presumptive and circumstantial. When a witness testified directly to the facts constituting a crime, the evidence is said to be direct and positive. When he testifies to facts and circumstances having only an indirect relation to the facts constituting the crime, the evidence is said to be presumptive and circumstantial. The commission of a crime may be proven by direct testimony,—that is, the testimony of persons who saw or heard,—or by circumstantial evidence. Circumstantial evidence is the proof of such facts and circumstances which interlock and dovetail into each other with relation to the defendants and the charge made as bears upon the guilt or innocence of the defendants; and if these are sufficient to establish the guilt of the defendants beyond every reasonable doubt, then this evidence is sufficient to sustain a conviction. But the circumstances should be of such character and should so relate to the offense charged as to establish the guilt of the

defendants beyond every reasonable doubt, and to exclude every reasonable hypothesis of innocence and every reasonable hypothesis except that of guilt.

Reference was frequently made during the trial and argument to the intent and purpose of the defendants with relation to the charge made. You are instructed that it is psychologically impossible to enter into the minds of the defendants and determine by practical demonstration the intent and purpose actuating the defendants. Acts sometimes speak louder than words, and therefore the law requires that all of the circumstances detailed by the witnesses surrounding the charge made and the defendants with relation thereto be considered by the jurors. In determining the intent and purpose which actuated the defendants in the line of conduct disclosed, it is necessary to take into consideration what they did together with what they said, and from all the surrounding circumstances relating to the acts charged determine the intent and purpose which must have actuated the defendants in the line of conduct disclosed by the testimony, having in mind the statements, the acts, the demeanor, and the presumption of law that a person intends the natural consequences of his acts knowingly done. This presumption is not conclusive. It is of probatory character, and should be considered with all the other

elements disclosed by the testimony in this cause. In a case of this character the jury may find from the facts and circumstances, together with the language used and the natural, ordinary, and necessary consequences of the acts done, the intent actuating the defendants.

You, gentlemen of the jury, are the sole judges of the facts in this case and must determine what the facts in the case are. It has not been my purpose and it is not my purpose to refer to any facts in the case, or to intimate to you any opinion I may have of the facts. If I have referred in my instructions to any fact or have conveyed to you any opinion I have of the facts, I desire you to disregard it.

You are likewise the sole judges of the credibility of the witnesses who have testified before you. This must necessarily follow so as to enable you to pass upon the facts disclosed. In determining the weight or credit which you desire to attach to the testimony of any witness who has testified before you, you will take into consideration the demeanor of the witness upon the witness stand, the opportunity of the witness for knowing the things about which he has testified, the reasonableness or unreasonableness of the story of the witness, his interest or lack of interest in the result of this controversy, and from all these facts and circumstances determine where, in your

judgment, the truth in this case lies. If you find that any witness has wilfully sworn falsely as to any material fact or circumstance involved in this case, you have a right to disregard his entire testimony, except as the same may be corroborated by other credible evidence.

In this case upon the rebuttal by the Government the court admitted a transcript of testimony taken in New York which had been excluded before. This was admitted because objection was made as to the correctness of the report of what did transpire and that some parts of the examination had been eliminated or not reported, while the other side contended that everything contended for appeared in the transcript. Now, this was admitted only for the purpose of determining whether the story that appears in this testimony is complete and whether the testimony of the witness who says that he heard the testimony and transcribed it correctly is probably correct or whether the contention of the defendants is probably correct, if you find that to be material in your deliberations. You will not consider that with relation to, or for any other purpose in this case. The statements that you will consider in this case, made by the defendants, if you find that any were made, you will take from the mouths of the witnesses that testified before you together with the cross examination that was made by the other side upon the trial, and

consider all of the,—you will consider all of the testimony fairly with a view to determining as twelve honest men what the fact is.

From your decision upon the facts in this case there is no appeal. You are the final judges of the facts in this case, so that neither the defendants nor the Government can appeal from your finding upon the facts. I simply suggest that to impress you with the responsibility that rests upon you, that you may fully and carefully weigh and consider all of the evidence that is before you.

It will require your entire number to agree upon a verdict; and when you have agreed upon a verdict you will cause the same to be signed by your foreman whom you will elect immediately upon retiring to the jury room.

There is just one other suggestion I desire to make, and that is this: Some reference was made in the trial, while no emphasis was placed upon it,—and I think I should say to you that being a conscientious objector to any law would not be any defense; and if, perchance, some of you may be impressed with the expression "conscientious objector," you will not give that any consideration in your deliberations in this case. Nor are you concerned with the penalty that is involved in this charge if a conviction should have been established. That is a matter which is not in your province; but that is a matter which the law places elsewhere.

You are just concerned with the facts in this case and nothing more."

The foregoing statement covers the court's entire instructions up to this point.

The court then inquired: "Are there any suggestions or corrections?"

Mr. Bell then replied: "In defining the essentials, you stated among other things that if they found the defendants conspired to hinder or delay the execution of a law of the United States, leaving out of that definition of the essentials one of the essential elements,—the element of force.

THE COURT: If I inadvertently omitted the term "force,"—

MR. REAMES: It is in there.

MR. BELL: We don't agree. I don't take my suggestions from Mr. Reames. I am excepting.

THE COURT: I am telling you that if I omitted I will include it now.

MR. BELL: I know Your Honor later referred to force, but in defining the essentials as I took it down at the time it was not included.

THE COURT: Very well.

MR. BELL: In the definition of force, the court told the jury that it need not be actual force. I take it that there could be no constructive force. In the face of this law, there is no such thing as constructive force. We therefore except to that.

THE COURT: I stated that it was necessary for the defendants to use actual force.

MR. BELL: We except to that portion of Your Honor's charge wherein he charged the jury that knowledge of existing law or laws would be inferred on the part of the defendants as bearing upon the intent, for the reason that the matter of intent would be a matter of proof and not of inference. We except again to Your Honor's instruction on the question of freedom of speech, for the reason that the question of freedom of speech, is not involved in the issues in this case, and instructions in that particular would have a tendency to confuse the minds of the jurors; and particularly that part of the instructions wherein Your Honor spoke of inciting to riots and disorder. All the incitations to riots and disorder in the world would not bring the defendants within the charge in this particular case and within the charge in the indictment.

THE COURT (to the Jury): You are instructed that the reference to freedom of speech should only apply to this circular,—that "No Conscription" circular which has been offered in evidence. Any reference in the instructions with relation to inciting to riot was simply given as a general definition of the term so that you will understand it, and you will understand that the reference should only apply to the charge in the indictment,—that is, the conspiracy to, by force, hinder and delay the Government as charged.

One form of verdict will be submitted. Some of the defendants are either guilty or not guilty. I mean that the defendants are either guilty or not guilty. Both counts are considered as one. You will simply write in the blank in the form after the name of each defendant the word "is" or "not," as you may conclude.

Mr. Bell's conference before arguments in which the court agreed to consider the instructions in the first case as offered, refused and exception allowed, took place while the jury was in the court room, and the exception noted to the instructions as given were taken in the presence of the jury before it retired to a consideration of the case.

Thereupon the jury retired to consider their verdict, and having returned into court a verdict of guilty against all of the defendants upon both counts in the indictment, the court on the 18th day of March, A. D. 1918, entered its judgment and sentence upon the verdict, which already appears of record in said cause.

And now in furtherance of justice and that right may be done the defendants and each of them and forasmuch as foregoing facts do not appear fully of record the defendants and each of them pray that this, their Bill of Exceptions, may be settled, allowed, signed and sealed by the court and made a part of the record and the same is accordingly done this 19th day of June, A. D. 1918.

JEREMIAH NETERER,
United States District Judge.

Service of within Bill of Exceptions and receipt of copy admitted this 29th day of April, 1918.

CLARENCE L. REAMES,

Attorney for U. S.

Indorsed: Bill of Exceptions. Filed in the U. S. District Court, Western District of Washington, Northern Division, June 19, 1918.

FRANK L. CROSBY, Clerk.

By ED M. LAKIN, Deputy.

United States District Court, Western District of Washington, Northern Division.

No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, SAM SADLER, MORRIS PASS and JOSEPH PASS,

Defendants.

Proposed Amendments to Defendants' Proposed Bill of Exceptions.

To defendants, Hulet M. Wells, Sam Sadler, Morris Pass and Joseph Pass, and each of them and to their attorneys:

You and each of you will please take notice that the following amendments are hereby proposed on the part of the plaintiff to the bill of exceptions proposed by the defendants, to-wit:

Page 2, line 25. After the words "Mr. Wells" add "Witness testified that leaving out the shop

number on the union label would make it a little difficult to find where the circular was printed."

Page 3, line 3. After "meeting" add "And Wells and Sadler were present during the discussion of the No-Conscription circular which took place at said meeting and which witness then heard."

Page 3, line 3. Strike sentence beginning "The matter of the ten proposed National Draft Act, etc.;" and the next sentence beginning, "It was stated generally, etc.," substitute, "Almost all the talk was along the line that there was about to be passed a law of universal conscription and that before the law was signed was the time to get action against it and not afterwards."

Page 3, line 15. Strike "a big bundle of these circulars in the room" and substitute "on the table right in front of him two bundles of these circulars and picked out several and looked at them."

Page 3, line 20. Strike sentence beginning, "Witness could not remember" and ending "by the Assembly." Substitute therefor "Witness could not say what was said by Sadler other than that it was in accord with what Wells said as to the actions necessary in the distributing of the circulars."

Page 3, line 28. After words "Sunday morning" add the sentence, "Those present were vouched for by the following method: They were asked to rise. Then those who were universally known there

were asked to certify whether such persons were trustworthy or not."

Page 4, line 4. After the word "afterwards" add "Mr. Wells took a more active part in the meeting than the others. Possibly it might be said that he took the leading part, though possibly no more than several others."

Page 6, line 6. After the word "meeting" add the following sentences, "Those present were then vouched for in the following manner—some fellow would stand up and a fellow in the room that knew him more or less would say "I vouch for him." Witness thought somebody vouched for him, but couldn't say. It wasn't necessary because he was known to ten or twelve people present who were members of the Socialist party once upon a time."

Page 6, line 16. After last sentence on this line add following: Q. The idea was to arouse people so that they would reach the Representatives in Congress?

A. I don't know. Maybe some people made remarks of that sort. It was a sort of general conversation.

Q. On the subject of this secrecy or attempted secrecy, Mr. Wells, the defendant here, said it was foolish and scoffed at the idea.

A. Well, I was trying to think about that and somehow it must have escaped my mind, I might have been so, but I did not hear it."

Page 6, line 24. After word "Government" insert the sentence: "Witness attended the meeting in the Epler Block on May 11, 1917, at about 8 o'clock in the evening."

Page 7, line 4. After words "requested them" add "And if they desired to distribute any of these in the precincts, they would come and get the circulars, and there was a notation made of each one and the map was consulted with reference to certain precincts that were numerically numbered on the map.'

Page 4, line 7. After the word "them" add the following: "Wells made a brief address about these circulars and his reasons for them, and said that he wanted them distributed." Witness said: "It was the general sense of the meeting that there would not be enough people there to take all of the circulars. It was suggested that if anybody else would want any of them, they could get them at the Labor Temple the next morning."

Page 7, line 8. Strike the sentence beginning "Witness stated" and ending "he could not see." Substitute therefor the following, "The question came up as to whether there might be people in the meeting that were not in sympathy with them and might be spies, and that theretofore there had been trouble of that kind. And so it was finally agreed that those present would be vouched,—that is, someone would get up and another would say if

they were known, "I vouch for him." This method of vouching was then followed. The defendant Wells vouched for the witness. At this meeting it was said that it was advisable to have a sergeant-at-arms appointed so that someone else might not come in there that would not be in sympathy with them. This suggestion met with the approval of the meeting, because there were two serveants, the witness thought, at that time appointed. It was suggested that persons leaving the hall should go out singly and not let anyone know that they had those circulars given to distribute, or to show them to anyone until Sunday morning—until they distributed them. That was for fear somebody might get hold of them. This suggestion met with the general approval of this meeting, and witness could recall no objection being made to it. Witness did not know whether the suggestion was actually followed out."

Page 7, line 17. After the word "interrupted" add "and that the idea of secrecy was because of the fear of being interfered with either by rowdies or by the government or by anybody else."

Q. You do remember that when that talk was on Mr. Wells ridiculed the idea of secrecy openly in the meeting?

A. He might have done that.

Q. Didn't you testify to that in the last trial?

A. I might have done so. I don't think that I

testified point-blank because I don't recollect it. There was a good many speaking. I have been a member of the Socialist party myself and I know they all want to talk. They have all different ideas. You can't listen to their ideas all at one time. That seemed to be a kind of an open forum meeting and wasn't conducted as usual.

Q. A kind of free for all?

A. Yes, three or four were speaking at the same time.

Page 7, line 31. Strike the sentence beginning "Witness did not recall." Substitute therefor the following:

"Q. There was talk about reaching the various members of Congress in this state?

A. No. That was not brought up. That has always been the consensus of opinion of them.

Q. Wasn't it discussed at that meeting?

A. It might have been."

Page 8, line 4. After the word "handled," add "other than that he saw the circulars handed out at this meeting, and that they were received and wrapped up," and witness could not say that Wells or anybody else took any away.

Page 9, line 16. After the words "same," add "Witness explained this consolidation by saying that it was considered that 'the two subjects were co-related and the same interests that were seeking to bring about a big influx of coolie labor, were

the same interests that were behind the attempt to put over the Draft Law.' It was felt that they should be dealt with as one subject."

Page 10, line 8. After the words "set forth" insert the following:

"Q. You know that he left the meeting with you with a tacit understanding that if the circular was prepared by somebody, he would oversee the matter of printing it?

A. Yes, that was the impression that he left with them as he left."

Page 10, line 25. At the end of the paragraph add the following, "And there was no suggestion of vouching for or identifying the persons present. The meeting of May 23rd at the Labor Temple was an open public one where anyone could get in who sought admittance. At said meeting there was no suggestion of vouching for or identifying those present."

Page 10, line 31. After the sentence closing with the words "Hall No. 107," add, "This was on a Monday toward the latter part of May. Witness could not recall the exact date."

Page 12, line 11. Strike that portion beginning with words "remembered that Morris Pass" and ending on line 14 with the words "for that purpose." Substitute therefor the following: "Testified that Morris Pass said he had attended only two meetings. One of these meetings was in the

Good Eats Cafeteria. Morris had stated the date, but witness did not remember just what the date was. Morris Pass did not tell the witness that the second meeting was called for the purpose of protesting against the high cost of living and that that was what Morris attended it for. Morris had said something to witness about getting to the second meeting late after the meeting was in progress."

Page 12, line 15. Strike that portion beginning with the words "that Joe Pass said," and ending line 17 with the words "Epler Block or not." Substitute therefor, "Joe Pass said he was at two meetings. One of these was at the Good Eats Cafeteria. The Epler Block had not been referred to by that particular name when Joe had been interrogated about attending the meetings."

Page 13, line 2. Add at the end of the paragraph the following: "Joe Pass said that the meeting at which the draft of the circular was discussed was to be for the same purposes as outlined by the American Union against Militarism, and that Joe's purpose in attending was for that reason."

Page 18, line 23. After the word "objection," add the following, "saying; the objection to this question is sustained. That may open a collateral issue that is not here, and the question is so broad that the court must sustain the objection. Of course some of the matters suggested by you might

be proper, but under this question it would not be limited to the things that might be proper."

Page 21, lines 9 to 13. Strike the portions beginning, "The proposed manuscript" and ending "it was too strong," and substitute therefor the following, "Witness said, So, as I remember, this manuscript of the pamphlet that had been prepared was lying on the table where he (Morris Pass) was sitting. I am not sure whether it was in front of him or not; but I—after my wife refreshed my memory I recall it in this way, that we walked over to the table and got the circular there, looked over it and objected to one of the phrases that it contained, because I thought was too strong."

Page 21, line 17. After words "stricken out," add "witness said, 'I overlooked another clause which expressed the same idea that if we must fight and die, and so on, let it be here instead of over there.' "

Page 22, line 18. After words "Labor Temple," add "Witness said 'my wife who has a great deal better memory of details heard me testify and said I was mistaken,' that I got the pamphlet that night."

Page 22, line 20. After the words "May 4th," add "After witness received the copy for the circular he carried it around until he got money from Morris Pass to make a payment on the printing."

Page 23, line 24. After word "do," add "Wit-

ness said 'No, I didn't want to leave the circulars in the hall in the first instance, because I knew I would be late getting back from home, and there would be a good many people there and they would be opened up and scattered around and the people would be familiar with the contents, and I would not be able to hold their attention so well.''

Page 24, line 8. After word ''recollection,'' add ''Witness said 'So I got up,—I expected to see Morris Pass there. I thought that he as secretary ought to have made arrangements. He wasn't there.''

Page 24, line 24. After word ''distribution,'' add ''After hearing my talk on what our purposes were in trying to defeat the conscription law, as I regarded it anti-American, even those that came there for a different purpose expressed themselves in sympathy, and most of them took circulars.''

Page 25, line 11. After the words ''three days,'' add ''On cross examination the following questions and answers were put to and made by defendant Wells:

''Q. Then at the time that you got it from him you read it over and objected to some of its phraseology relating to civil war?

A. Yes.

Q. You read the circular over at that time to the extent that you knew that there was some objectionable matter in it?

A. I certain didn't read it all over, or I would have struck out exactly the same phrase later on.

Q. You mean to say that you at that time simply read over the portion that you struck out?

A. Certainly, they told me I was to get the circular printed, and I went over and got the circular and glanced over this first part of it and noticed the phrase about civil war and struck it out.

Q. You didn't read the rest of the circular?

A. Not at that time, no."

Page 25, line 15. After word "superficially," add "In explanation of this term witness said, 'I would read those headlines in which I am accord. I would read about the construction and I would read the part from Daniel Webster. All that I would agree with. Reading hurriedly, that would give a general idea.' "

Page 25, line 28. After word "rezest," add "One place where the word 'as' inserted didn't make very good sense, witness could see that the word should be 'so'."

Page 26, line 2. After the word "office," add "There he wrote on the back of the proof the following words, 'Corrected proof. Would like circulars for Friday evening, and signed it 'Wells'."

Add further: "Witness' attention was then called to his testimony at the former trial where he was asked how the shop number came to be

stricken from the proof, and witness had then testified that he knew Mr. Listman to be cautious and conservative in his views and that Mr. Allen, U. S. Attorney, had been making rather flamboyant threats as to what they were going to do. Witness admitted that he had given such testimony at the former trial and that it was true."

Page 27, line 5. Strike the words "although he had not made a careful examination of it," and add the following "Witness did not know whether he got his general idea of the National Defense Act from reading it in the statutes or in the newspapers. He had no recollection of testifying at the former trial that he was familiar with the Act."

Page 27, line 20. Before the word "He's" and at and as the beginning of the sentence insert: "Witness testified that Morris Pass did not tell why he had been unable to rent a post-office box, and then."

Page 30, line 21. After the word "point," add "Witness said, 'It was suggested,—I remember one of the suggestions was that the circular ought to be very short and to the point, that it should just make one point. We thought we could cover only one,—whether the point should be made that the person getting it should write to Congress or whether the point presented should be that the person getting it should come to a mass meeting, caused some discussion.' "

Page 31, line 16. After the word "distribution," add "The suggestion was made that if all got out at one time before any one was up the effect of publicity would be better, as people would be in to ask of their neighbors, 'Did you get one.' "

Page 32, line 6. After the word "circular," add "Witness thought very likely that she contributed to that fund but could not know who was going to prepare and write the circular. That had not been decided. Her clearest recollection was that just as she was going the group at the other table was concerned over that with an endeavor to get two or three people there to take the burden. She did not know who wrote the circular.

The groups which attended this meeting was not very large. She did not remember who acted as chairman, because the regular president was not there. She was not certain whether one person acted as chairman all the time, nor whether it was a man or woman, but she was rather inclined to think it was a man.

Page 34, line 1. After the word "pamphlet," add "Witness testified that he had no connection with the matter other than what he had related on his direct examination."

Page 34, line 20. After the words "years of age," add "He had never declared his intention to become a citizen of the United States, nor had his father ever applied for citizenship."

Page 36, line 16. After the word "Pass," add "Witness was not known in Seattle as Morris Levine. Since his folks were in Seattle known as Pass, it wouldn't be appropriate for him to use a different name than his folks."

Page 36, line 7. After the word "building," add "on the Friday night before the Sunday on which the circulars were distributed. There is only one Socialist Headquarters in the Epler Block."

There were some loose circulars on the table. Witness was at this meeting late in the evening. He could not say whether the circulars there were the same as Government's Exhibit No. 6."

Witness' name is just Joe Pass. Leo or Levine is not his middle name. He has no middle name. Witness took the same name that Morris took because Morris had travelled under that name two summers before. Witness had never been on the road before. This was the first time that he had ever used an assumed name.

Witness never told any registration officers that his address was New York City. Witness did not tell the registration officers his name was Joe Pass until after he was arrested and out on bail.

Page 40, line 3. After the word "delivery," add "to which address witness direction, mail from his own family was sent. Witness' mail and Morris' mail even from members of their own family was

directed to General Delivery, New York City, as long as they stayed in New York. The first night in New York witness and his brother Morris stopped in a hotel. Then for the first week they went to some place on the West Side and resided there. After living a week on the West Side of New York they found quarters in Greenwich Village., 16 Christopher Street."

Page 40, line 31. After word "years," add "Witness had never declared his intention to become a citizen of the United States."

Page 41, line 11. After the word "used," add "Witness made the following answers to the following questions:

"Q. Did it strike you at that time peculiar that the leaflet was calling for armed resistance to the government of the United States?

A. Now, under the psychological effect that I was at that time, knowing the people that were present there, which were, by the way, quite a few church people and middle class—

Q. Why won't you tell us who they were?

A. Because I don't know their names. I know the type; they are Dr. Strong's type. If I would see him I would know he was a minister.

Q. Did you tell the meeting at that time as a literary critic that the meaning of the words that they were putting into this circular meant armed resistance to the government of the United States?

A. I didn't go into the full details.

Q. You didn't think it of enough importance?

A. I wasn't a member of the organization. Not being a member, I didn't think it proper to butt in."

Page 42, line 4. After word "present," add "If witness had considered what was taking place was wrong he probably would have said something by way of protest, but not with enough 'ginger.' Witness didn't think any crime was being committed."

Page 43, line 17. After the word "delegates," add "While witness was at the meeting in the Epler Block there was no discussion by anyone in reference to the No Conscription circulars."

Page 44, line 8. After the word "Block," add "There were two rooms in one with an archway. A person sitting in one room can only see on an angle on the other side of the room. The Socialists had no other headquarters in that building. If they had witness would have known it. He carried a key to the headquarters."

Page 44, line 28. After the word "law," add "There had been discussions. Witness thought Sadler might know, so he went to Sadler and asked the latter's advice whether witness should register in the event it became a law."

Page 47, line 18. At the beginning of the paragraph insert the following: "On cross examination witness said that Mr. Wells' attitude had always

been towards the enforcement of the law as written except as he could have it modified. Witness did not know specifically whether Mr. Wells was in accord with the principles of the Socialist Party relative to its war program. She did not know whether he was in accord with the specific declaration of the National Socialist Platform in which it says the declaration of war on the part of the government is a crime. She had never read the war platform of the Socialist party. Witness had never heard her husband say that the present war of the United States against the Imperial German Government is a crime."

Page 47, line 19. After the word "resolution," add "introduced in the Labor Temple on May 23d. Witness testified in response to question as follows:

'Q. Does the statement in this which was introduced after war was declared, that refers in express language to the war being fought in an unworthy cause, are those his sentiments?

A. I know that he wrote that resolution, and he read it to me. I can't vouch for that being in there.

Q. You admit those represent his true sentiments?

A. I think they do, if that is in there.' "

Page 47, line 26. After the word "him," add "Witness testified as follows:

'Q. Did you stay there throughout the entire

meeting?

A. It was not a very long meeting. I know we left before eight o'clock. I just went there and ate supper and stayed a little while.

Q. Did some person after you arrived read a draft of this circular?

A. Not that I know of.

Q. It has been testified to by a number of witnesses—

A. I told you that I went late.

Q. You went late?

A. Yes, I met Miss Strong as she was coming out.' "

Page 48, line 26. After the word "false," add the following: "Witness at the time of the examination of defendants Morris and Joe Pass in New York, had prepared and at the time of this trial had here a full and accurate statement of what said defendants had stated on said examination. Witness had put nothing into said statement that did not happen and had left out nothing that did happen."

Page 49, line 1. After word "then," and "and circulated them, Morris Pass did not recollect how many he had circulated. He had not left any in doorways or halls, or like that, but had just handed them to his friends. We had had about a dozen or two dozen of those circulars."

Page 49, line 13. After the word "name," add

the following:

"Q. In your presence a number of questions were asked Morris Pass in reference to the meeting in the Socialist Hall where the circulars referred to were distributed,—that is a fact, isn't it?

A. Where the circulars were distributed, yes sir.

Q. You did identify that meeting by the meeting where the circulars were distributed, didn't you?

A. Yes sir.

Q. He was asked a number of questions with reference to that meeting?

A. Yes sir.

Q. Why wasn't Joe Pass? Where are they?

A. I don't know, Mr. Bell; I didn't do the questioning.

Q. Don't you know why he was not interrogated on that subject?

A. He was questioned about the circulation, Mr. Bell.

Q. Yes; but not a question with reference to his attendance or non-attendance at that meeting is shown in that transcript,—that is a fact, isn't it?

A. If I may look over it (counsel hands transcript to witness).

THE COURT: Anything further?

MR. BELL: Yes, I am waiting for the witness to answer the question.

Q. There is nothing shown there?

A. I can't find any.

Q. If Joe Pass was asked whether or not he attended that meeting, it does not show in your notes?

A. No sir, I can't find it in here.

Q. And will you tell this jury why it was when these boys,—when these defendants Joe Pass and Morris Pass were being cross examined by those detectives, Joe Pass was not asked whether he attended the meeting in the Socialist Hall?

A. I don't know, sir.

Q. Isn't that what they were trying to find out?

A. I don't know. I was merely the stenographer at that meeting and not the questioner."

Page 50, line 30. After the word "exhibit," add the following: "The court, on the admission of said transcript in evidence said:

'The rule contended for by the defense is the one that has been adhered to by the court and is unquestionably the law. In my judgment, however, that has not application here. Here is a charge made that a part of the record has been suppressed, or that the witness upon the stand, is falsifying the record, or is falsifying the record and permitted to do that, perhaps, by his superiors. This now raises an issue of itself. The Government contends that the record as disclosed is a full, true and complete

record, not only of what did transpire, but likewise covers the field concerning which the inquiry was made. So upon that the record would speak for itself. And this is the issue that the jury must determine in weighing the testimony and credibility of the witness. Upon the objection made, and that is the only one, the court can consider I think the record should be admitted and an exception noted. This is simply the transcript with relation to Joe Pass.' "

Page 61, line 7. Strike all that portion beginning "at which the circulars were distributed—," and extending to and including the word "transcript," and substitute therefor and add the following, "which had been identified as held at the Good Eats Cafeteria. Witness replied, 'I believe so, if the statements show it.' "

The court then observed:

"THE COURT: Let me make this observation: If the witness is merely to be interrogated as to the contents of that record and the various phases of the inquiry, isn't that a matter of argument to be presented to the jury rather than of testimony?

MR. BELL: I had supposed that entire matter would be; but now that the transcript is in evidence, I want to cross examine, if I may, upon its contents.

THE COURT: The only purpose for which

that could be admitted, as I stated, would be to show the scope of the examination and whether the record discloses the scope contended for by the Government or the charge made by the defendants; and if there are any disclosures in the record that are foreign to this issue, why, those, of course, would not be considered by the jury in determining the facts in this case other than as it may bear upon the credibility of the testimony of this witness as to disclosures made by the witness heretofore.

MR. BELL: Your Honor will recall that Joe Pass was asked on the witness stand a few moments ago, whether or not he had been interrogated with reference to the second meeting,—the meeting at which the circular had been distributed. He said that he had been interrogated with reference to that meeting, that a number of questions were put to him and answers given by him. I then asked this witness whether the transcript showed any such question or answers, and he said that it did not. That, I take it, should have settled the matter because this evidence would show nothing.

THE COURT: I simply made that inquiry. If that is the only purpose, that would be a matter of argument rather than of testimony. If there is any other purpose, I don't know what it is.

MR. BELL: I simply wanted to bring out that this transcript made by this witness shows that Joe Pass was interrogated at New York in

reference to the meeting at the Good Eats Cafeteria, but fails to show that he was interrogated with reference to the meeting where the circulars were divided up for distribution.

THE COURT: You can point that out to the jury, as well as the witness can.

MR. BELL: I offer to show by this witness that at this meeting, Joe Pass was interrogated at New York in regard to the first meeting held in reference to the circular, but that this record fails to show that he was interrogated with reference to the second meeting where the circulars were brought and distributed.

THE COURT: The transcript would speak for itself. It would show what is in the record and what is not in the record."

BEN L. MOORE,

Assistant U. S. Attorney.

The above amendments to Bill of Exceptions, excepting therefrom portions stricken with red pencil, are hereby allowed as a part of the Bill of Exceptions settled and certified in said cause.

This June 19, 1918.

JEREMIAH NETERER,

Judge U. S. District Court.

O. K. WINTER S. MARTIN,

Atty for Defts.

Indorsed: Proposed Amendments to Defendants' Proposed Bill of Exceptions. Filed in the

U. S. District Court, Western Dist. of Washington, Northern Division, June 19, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

United States District Court, Western District of Washington, Northern Division.

At Law. No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, SAM SADLER, MORRIS PASS and JOE PASS,

Defendants.

Order Settling Bill of Exceptions.

Now, on this 19th day of June, 1918, the above cause came on for hearing on the application of the defendant to settle the bill of exceptions in this cause, counsel for both parties appearing and it appearing to the court that defendants' proposed bill of exceptions was duly served within the time provided by law and that the plaintiff's proposed amendments were also served within the time provided by law and the court having heard counsel and being advised:

Adopts the bill as proposed by the defendant together with the amendments proposed by the plaintiff and it appearing to the court that said bill of exceptions, as proposed by defendant, taken in connection with the amendments proposed by

the plaintiff and hereby adopted contains all of the material facts occurring upon the trial of said cause, together with the exceptions thereto and all of the material matters and things occurring upon the trial, except the exhibits introduced in evidence which are hereby made a part of said bill of exceptions and the clerk of this court is hereby ordered and instructed to attach the same hereto.

IT IS ORDERED that said proposed Bill of Exceptions, together with said amendments be and the same is hereby settled as a true Bill of Exceptions in this cause and the same is hereby certified accordingly by the undersigned, judge of this court who presided at the trial of said cause, as a true, full and correct Bill of Exceptions and the clerk of this court is hereby ordered to file the same as a record in said cause and transmit the same to the Honorable Circuit Court of Appeals for the Ninth Circuit.

JEREMIAH NETERER,
Judge.

O. K. This June 19, 1918.

BEN L. MOORE,
Asst. U. S. Atty.

Indorsed: Order Settling Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 19, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

United States District Court, Western District of Washington, Northern Division.

At Law. No. 3797.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HULET M. WELLS, SAM SADLER, MORRIS PASS and JOE PASS,
Defendants.

Petition For Writ of Error.

Come now the defendants above named and respectfully show:

That on the 21st day of February, 1918, a jury duly empanelled in the above entitled cause found a verdict of guilty against each of the defendants upon the indictment herein; that thereafter and on the 18th day of March, 1918, final judgment was pronounced and entered in said cause against each of said defendants, wherein and whereby it was adjudged that Hulet M. Wells be imprisoned in the United States penitentiary at McNeil's Island for the period of two (2) years; that Morris Pass be imprisoned at said place for the period of two (2) years; that Joseph Pass be imprisoned at said place for the period of two (2) years; and that Sam Sadler be imprisoned at said place for the period of two (2) years.

That on said judgment and the proceedings had prior thereunto in this cause certain errors were committed to the prejudice of the said de-

fendants, all of which will more in detail appear from the assignment of errors which is filed herewith.

Your petitioners, said defendants, feeling themselves aggrieved by said verdict and judgment entered thereon as aforesaid, herewith petition this Honorable Court for an order allowing them to prosecute a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit under the rules of said court in such cases made and provided.

Wherefore your petitioners, said defendants, pray that a Writ of Error issue in this behalf to the United States Circuit Court of Appeals for the Ninth Circuit aforesaid, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals.

WILSON R. GAY,
WINTER S. MARTIN,
Attorneys for Defendants.

Service of the foregoing petition and the receipt of a copy thereof is hereby admitted this 28th day of June, 1918.

BEN L. MOORE,
Assistant United States Attorney.

Indorsed: Petition for Writ of Error. Filed in the U. S. Dist. Court, Western Dist. of Washington,

Northern Division, June 28, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

United States Circuit Court, Western District of Washington, Northern Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, SAM SADLER, MORRIS PASS, JOE PASS,

Defendants.

At Law. No. 3797.

Assignment of Errors.

Comes now the defendants and each of them in the above cause and file the following Assignment of Errors upon which they will rely upon the prosecution of Writ of Error herein to the United States Circuit Court of Appeals for the Ninth Circuit, from the judgment of conviction and sentence of the above entitled court, entered herein on the 18th day of March, A. D. 1918:

I.

The court erred in not discharging the jury and dismissing said defendants and each of them when the cause was called for trial and the jury empanelled for the reason that the indictment and each count thereof fails to charge an offense under the laws of the United States.

II.

The court erred in the admission of evidence

offered by the plaintiff in the following instance, to-wit:

a. James A. Duncan was next called by the plaintiff and testified among other things that he was present on the 23rd day of May, 1917, at a meeting of the Central Labor Council in Seattle and identified plaintiff's Exhibit VII—as a resolution offered before that body by defendant Wells. This resolution (Plaintiff's Exhibit VII) was offered in evidence by the prosecution, and thereupon Mr. Bell, attorney for defendants, objected upon the ground that it was immaterial and did not tend to prove any issue in the case. This resoultion (Plaintiff's Exhibit VII) was then admitted by the court over Mr. Bell's objection. An exception was allowed and noted.

b. C. J. Fraser was called as a witness for the prosecution and stated that he found a copy of Plaintiff's Exhibit VI, to-wit: The No-Conscription Circular, upon the front porch of his home, which was located about a block from the boundary line of the Fort Lawton Military Reservation, on Sunday morning, the 13th day of May, 1917. He was asked by the prosecution if he exhibited this circular to anyone else. Thereupon counsel for the defense objected upon the ground that the defendants were not shown to be responsible for the witness' exhibition of the circular. This objection was overruled and thereupon Mr. Bell, attorney

for defendants, excepted, which exception was allowed.

c. Mrs. C. J. Fraser, wife of the witness above named, was called as the next witness for the plaintiff. She recognized Plaintiff's Exhibit VI, which her husband found on the front porch of their home on Sunday morning, May 13th. She found three other similar circulars in her mail box. Defendants objected to the testimony and moved to strike upon the ground that they were not responsible for the distribution of the circular, unless connected with the defendants. Motion overruled by the court, who then announced "same ruling." An exception was clearly implied from the nature of the objection, which was similar to the objection and reason therefor urged against the testimony of Mr. Fraser, the witness, who immediately preceded Mrs. Fraser, and which covered the same subject matter.

III.

At the close of the plaintiff's cause, Mr. Bell, attorney for defendants, then moved for directed verdict as to each and all of the defendants, to which refusal of court Mr. Bell took an exception, which exception was allowed and duly noted in the record.

IV.

The court erred in not granting the said motion to dismiss made at the close of the plaintiff's

case, for the reason that the indictment failed to state facts sufficient in either count thereof to constitute a cause of action against the defendants and failed to charge them with facts sufficient to show the commission of any offense against the United States.

V.

The court erred in failing to grant defendants' motion for a directed verdict of "not guilty" in favor of each of the defendants in the above cause, for the reason that the Government's evidence in the entire presentation of the plaintiff's case, as shown by the Bill of Exceptions, did not show the commission of any offense against the laws of the United States.

a. The court erred in failing to grant defendants' motion for directed verdict for the specific reason that there was no evidence tending to show as a matter of law that it was the object and purpose of the defendants to enter into a conspiracy to oppose by force or to prevent, hinder or delay the execution of any law of the United States.

b. There was no evidence in the case from which the court could say that a purpose existed on the part of the conspirators to oppose by force or by force to prevent, hinder or delay the execution of any then existing law of the United States.

c. The court erred in holding that a resolution of Congress, declaring war between the United

States and the Imperial German Government and devoting the resources of the country to the prosecution of said war, was so comprehensive in its scope as to include within its terms previously existing laws governing the military organization of the United States so as to constitute such a law or set of laws as could be opposed, hindered or delayed by the conduct of the defendants as shown in the record in their effort to prevent the adoption of a conscription or selective draft act, which had not then been passed.

d. The court erred in holding that the circular published by the defendants, together with their explanation of its purpose and object constituted as a whole such a sufficient state of facts as to show a purpose to enter into a conspiracy to defeat by force the then existing laws of the United States, to-wit: The act of June 3rd, 1917, making provision for national defense and other acts relating thereto.

e. The court erred in holding that the resolution of Congress on April 6, 1917, declaring war between the United States and the Imperial German Government was an existing law which could be opposed by force and which came under the purview of Sec. 6 of the Penal Code.

VI.

The court erred in the rejection of evidence offered by the defendants upon said trial in the

following instances, to-wit:

a. Defendant Wells, among other things, stated that he was a member of the American Union Against Militarism, which society had many things in common with the Socialist party. That it maintained headquarters in New York and Washington and disseminated literature against militarism. After war was declared this society ceased opposition to the war itself, but maintained its organization because it was thought that occasions might arise which would require the liberty of the people to be safeguarded. It was thought that conscription would quite likely become one of the measures and that the society and its members should endeavor to prevent the enactment of such a law. At this point, Mr. Bell, for defendants, asked this question: "What steps were taken by the local branch, by yourself and other members, with reference to opposing the conscriptive act?" Mr. Reames for the prosecution objected, upon the ground that the inquiry was immaterial. Mr. Bell then referred specifically to the act of May 18, 1917; Mr. Reames then objected on the ground that such inquiry was immaterial. The court sustained the objection. Mr. Bell then stated to the court as follows: "It would tend to show that the matter of good faith on the part of said defendants, what they did, what they said in reference to this conscription act, what they did and why they took

part in the circulation of the circular about which so much has been said in the case in chief." The court sustained the objection. Mr. Bell noted an exception.

b. Defendant testified that he wrote various men in Congress and received replies from them and among them one from Mr. Dill, stating that he, Mr. Dill, Congressman, was in agreement with his views. Defendants offered to introduce said letters. Mr. Reames, for the Government, objected to their introduction. The court sustained the objection. An exception was then taken by Mr. Bell.

c. Anna Louisa Strong was called by the defense and testified that she had been connected with the American Union Against Militarism. Had attended a number of its meetings held by the Seattle Branch before war was declared. She was asked as to the purpose of local branch and the general organization. Mr. Reames objected on the ground that the question was immaterial. The court sustained the objection and Mr. Bell preserved an exception to the court's ruling. Mr. Bell stated it was preliminary for the purpose of leading up to other questions.

d. MR. GREENE, a Government witness, was called in rebuttal and testified that a statement by defendant, Joe Pass, (made during his examination as a defense witness to the effect that certain statements made by him in New York had been

left out of the statement by the Witness Greene on direct examination), was not true, to-wit: That nothing had been left out of the statement which Mr. Greene testified as having been made by Joe Pass in New York. Mr. Bell then cross-examined to ascertain whether the transcript of Joe Pass' testimony in New York, which Mr. Greene had used to refresh his recollection during his examination in chief, contained any statement to the effect that Pass was interrogated specifically as to the Epler Block meeting, at which the distribution of the circulars occurred. Mr. Greene, upon looking at the transcript, could not find that the Epler Block meeting had been referred to specifically. Mr. Bell then asked the following questions, to which the witness made answer, viz:

"Q. In your presence a number of questions were asked Morris Pass in reference to the meeting in the Socialist Hall where the circulars referred to were distributed, that is a fact, isn't it?

A. Where the circulars were distributed, yes, sir.

Q. You did identify that meeting by the meeting where the circulars were distributed, didn't you?

A. Yes sir.

Q. He was asked a number of questions with reference to that meeting?

A. Yes sir.

Q. Why wasn't Joe Pass? Where are they?

A. I don't know, Mr. Bell; I didn't do the questioning.

Q. Don't you know why he was not interrogated on that subject?

A. He was questioned about the circulation, Mr. Bell.

Q. Yes, but not a question with reference to his attendance or non-attendance at that meeting is shown in that transcript, that is a fact, isn't it?

A. If I may look over it (counsel hands transcript to witness).

THE COURT: Anything further?

MR. BELL: Yes, I am waiting for the witness to answer the question.

Q. There is nothing shown there?

A. I can't find any.

Q. If Joe Pass was asked whether or not he attended that meeting, it does not show in your notes?

A. No sir, I can't find it in here.

A. And will you tell this jury why it was when these boys, when these defendants, Joe Pass and Morris Pass were being cross-examined by those detectives, Joe Pass was not asked whether he attended the meeting in the Socialist Hall?

A. I don't know, sir.

Q. Isn't that what they were trying to find out?

A. I don't know. I was merely the stenographer at that meeting and not the questioner."

At this point Mr. Reames, for the Government, offered the transcript of the testimony containing the questions propounded to the defendant, Joe Pass, in the office of the United States Secret Service, together with his answers.

Mr. Bell objected on the ground that the witness should testify from his recollection and from that only, stating that he could have recourse to notes made at the time for one purpose only, viz: that of refreshing his memory, and that the witness could not make his own notes and then introduce them.

The question asked of the witness by Mr. Bell was whether his notes indicated any question propounded to defendant, Joe Pass, upon the very matter which he was brought from New York for examination. The witness stated that they did not.

Mr. Bell then said his purpose was to show that this particular question was not asked of Joe Pass or that if said questions were asked they were eliminated from the transcript.

Thereupon the court overruled Mr. Bell's objection and admitted in evidence the entire transcript of the testimony of Joe Pass in his examination in New York City, which purported to contain all questions propounded to and answers made by him in the office of the Secret Service of the

United States in New York City as plaintiff's Exhibit II.

Thereupon Mr. Bell, for the defense, took an exception, which exception was allowed.

Plaintiff's Exhibit II was admitted over defendant's objection and is set forth in the Bill of Exceptions in said case. Mr. Bell then offered to cross-examine plaintiff's rebuttal witness, Mr. Greene, to explain or throw light upon apparent discrepancies between Joe Pass' testimony on the witness stand and his statement to the witness Greene in New York City, which was contained in the transcript admitted in evidence. Mr. Bell then offered to show by the witness that Joe Pass was interrogated in New York in regard to the first meeting held in reference to the circular, but that the transcript fails to show that he was interrogated with reference to the second meeting when the circulars were brought out and distributed. The court refused to allow Mr. Bell to cross-examine his witness concerning this transcript, to-wit: Plaintiff's Exhibit II, on the ground that the transcript would speak for itself. Mr. Bell then took an exception to the court's ruling and the rejection of Mr. Bell's offer.

VII.

Thereupon Mr. Bell, for the defendants, moved for directed verdict of not guilty in said cause in favor of all of the defendants. In reply the court remarked, "Let the record show a motion for di-

rected verdict for all the defendants is denied and exception allowed."

VIII.

The court erred in not granting the motion for directed verdict in favor of all the defendants for the reason that the entire evidence in the case showed no purpose or plan and no conspiracy on the part of the defendants to oppose any existing law of the United States.

a. The court erred in not dismissing the said cause and discharging the jury for the reason that the indictment and each count thereof, fails to state facts sufficient to constitute a cause of action against defendants or any of them and fails to show the commission of any offense against any existing law of the United States.

b. The court erred in holding that the resolution of Congress of April 6, 1917, declaring war between the United States and the Imperial German Government, was so related to any previously existing law of the United States as could be violated and opposed by force in its execution by any acts of the defendants, as shown and disclosed in the entire testimony.

c. The court should have held as a matter of law that the testimony as a whole disclosed no evidence of any conspiracy to oppose, prevent, hinder, or delay any existing law of the United States. That the testimony os a whole showed a purpose to oppose the adoption of a law which had not been

passed. There was no evidence of any purpose or plan to hinder, delay or defraud the execution of existing laws, or any law after its passage, and no evidence of a felonious or criminal purpose in the entire case.

d. The court erred in not directing the jury to return a verdict of not guilty as against each of the defendants for the reason that the evidence and the whole thereof, was clearly insufficient to sustain the allegations of the indictment.

IX.

The court erred in refusing to give the defendants' requested and proposed instructions in cause No. 3671, as and for the requested and proposed instructions in this cause, to-wit: No. 3797, in the District Court, Western District, Northern Division. Said proposed instructions being those certain instructions which the defendant, Wells, offered in the trial of No. 3671, which cause is referred to in the Bill of Exceptions by an explanatory note written into said bill; which said proposed instructions in cause No. 3671, insofar as applicable to the present case, were considered by the court and as offered, refused, denied and exceptions preserved and noted by the defendants' counsel. Said proposed instructions in said cause No. 3671, upon which plaintiffs in error now assign error, were as follows, to-wit:

First: The court erred in refusing the first of said instructions, which were as follows:

"I instruct you to find for the defendant, Hulet M. Wells, not guilty."

Second: The court erred in refusing to give the second requested instruction, making the necessary change therein, to read as follows:

"I instruct you to find the defendant, Morris Pass, not guilty."

Third: The court erred in refusing to give the third requested instruction, making the necessary changes, as follows:

"I instruct you to find the defendant, Sam Sadler, not guilty."

Fourth: The court erred in refusing to give the fourth requested instruction, making the necessary changes, as follows:

"I instruct you to find the defendant, Joe Pass, not guilty."

The court erred in refusing to give the fifth requested instruction, to-wit:

"I instruct you to find the defendants not guilty under Count One of this indictment."

The court erred in refusing to give the sixth requested instruction, eliminating count three in the language and substituting count two, so as to read as follows, to-wit:

"I instruct you to find the defendants not guilty under Count II of this indictment."

Seventh: The court erred in refusing to give the eighth instruction requested, to-wit:

"The first element of the crime of conspiracy, namely, the conspiring together, confederating together or agreement together is one of the essentials of the crime. By this is meant an intelligent, mutual agreement or understanding to co-operate for the purpose of carrying out some preconceived plan. There must be a preconceived plan. There must be some agreement to co-operate, there must be some meeting of the minds of the conspirators. Each of the conspirators must know that the other conspirator is going to do something to accomplish the end of the conspiracy. Mere knowledge that another or others are about to commit or about to attempt a crime, will not make one a conspirator. The mere haphazard doing of acts by persons acting independently does not constitute a conspiracy even though the acts done may tend to one end and even though each person may know of the other's acts."

Eighth: The court erred in refusing to give the eleventh requested instruction, to-wit:

"I instruct you that Article I of the Amendments to the Constitution of the United States provides that 'Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.' That one of the inalienable rights of every Aemrcian citizen which even the

Congress of the United States is powerless to abridge is the right to peaceably assemble and petition Congress or individual representatives in Congress upon any matter of legislation whether the same be still pending and under consideration by that body, or whether the same shall have been finally passed and enacted into law, and whether the purpose of the petition be to defeat the passage of such act or to secure its amendment or repeal, and under no circumstances can the exercise of this right in good faith be considered criminal or even unlawful. It is likewise the inalienable right and privilege of all persons whether they act singly or collectively, to speak and write freely upon all questions of public importance and in so doing they are fully protected by the provisions of the Constitution I have just quoted, so far as you are concerned with the question in this case, so long as they do not advocate, advise or encourage the use of force in hindering, opposing or delaying the exercise of some existing law of the United States, or do not advocate, advise or encourage forcible opposition to the authority of the United States under such existing law.

It is extremely important that throughout all your deliberations in this case you should bear this point clearly in your minds. It is the policy of our law to permit at all times and in all places and under all circumstances the free discussion of all

public questions providing only that such discussion does not partake of the nature of advice or encouragement to resist existing law or existing authority, and neither the pendency of war nor any consideration of public necessity or patriotic duty can in any manner curtail or abridge this right of free discussion and free assemblage."

Ninth: The court erred in refusing to give the twelfth requested instruction, which is as follows, to-wit:

"I instruct you that the introduction on the 23rd day of May, 1917, before the Central Labor Council of the City of Seattle of the resolution which is set out in the indictment in this case was an ordinary exercise of the right of free speech and peaceable assemblage guaranteed to every person by the Constitution of the United States, and that you will not consider the same as in any sense unlawful or treat it as an overt act committed in pursuance of any unlawful conspiracy."

Tenth: The court erred in refusing to give the fifteenth requested instruction, which, eliminating the words "Count III" and substituting therefor the words "both counts," is as follows, to-wit:

"I instruct you that prior to the 18th day of May, 1917, neither the President of the United States nor any other person or body had any authority to call into the service of the United States or to organize the unorganized militia of the United

States. The authority to organize and call such militia into service is vested by the Constitution of the United States solely in Congress and until the 18th day of May, 1917, Congress had not exercised such authority. Prior to that date the only military forces which the President or any other officer of the United States had authority to call into service or to organize or direct in any manner were the regular naval forces, the regular army and the National Guard, and unless you believe from the evidence in this case beyond a reasonable doubt that it was the purpose of the defendants or of some one of the defendants acting in collusion and conspiracy with some other persons unknown, to forcibly oppose the authority of the Government in organizing and directing the regular naval forces, the regular army or the National Guard, you will find all the defendants not guilty under both counts of the indictment."

Eleventh: The court erred in refusing to give the sixteenth requested instruction, which, eliminating the words "Count II" and "page 15," and substituting for the words "Count III" "both counts," is as follows, to-wit:

"You will observe that in both counts of the indictment, it is charged that the defendants conspired by force to oppose the authority of the United States and of the President of the United States in carrying into effect the provisions of the

laws then existing, relating to the armed military and naval forces, and such other laws as might thereafter be enacted in pursuance of the joint resolution of Congress declaring war. In this connection I wish to caution you that you can not consider whether it was the purpose of the defendants or any of them, to prevent, hinder and delay the execution of any law that had not yet been enacted, or to oppose the authority of the Government or of the President under any law not yet enacted for the reason that I have already explained, that a man can not be guilty of a conspiracy to violate or obstruct or oppose laws which have not yet been enacted, nor can he be guilty of conspiring to oppose authority which has not yet been conferred; and so in determining the question of the defendants' guilt or innocence you must ignore entirely any statute, whether pending in Congress or not, which had not been finally enacted into law at the time the conspiracy is charged to have existed."

Twelfth: The court erred in refusing to give the nineteenth requested instruction, which is as follows, to-wit:

"Every person accused of crime is presumed in law to be innocent of the crime charged until his guilt is proven by competent evidence to the satisfaction of the jury and beyond all reasonable doubt. This presumption is not a mere fiction which a jury may lightly disregard, but is a substantial right

accorded by law to protect the innocent from unjust and unfounded accusations. It accompanies the defendant throughout the trial of the entire case. It follows therefore that you have no right to draw any inference of guilt from the fact that the grand jury has returned an indictment against these defendants, nor will you form your opinions of guilt or innocence as the evidence is being introduced during the trial, or until all of the evidence has been presented on both sides, and until you have been instructed by the court upon the law of the case, and you have finally retired to your jury room to deliberate upon your verdict."

Thirteenth: The court erred in refusing to give the twentieth requested instruction, which is as follows, to-wit:

"As I have already instructed you, the defendants in this case are presumed to be innocent until the contrary has been shown to your satisfaction beyond a reasonable doubt. It is not incumbent upon the defendants to prove their innocence. The burden rests upon the Government to prove their guilt. This burden never shifts to the defendant, and unless the Government has satisfactorily met this requirement as to each defendant, the jury will acquit such defendant."

Fourteenth: The court erred in refusing to give the twenty-first requested instruction, which is as follows, to-wit:

"I instruct you that in a criminal action you can not base conviction upon mere probabilities, but before you can find any defendant guilty you must be satisfied of guilt beyond all reasonable doubt."

Fifteenth: The court erred in refusing to give the twenty-third requested instruction, which is as follows, to-wit:

"Evidence is either direct and positive, or presumptive and circumstantial. When a witness testifies directly to the facts constituting the crime the evidence is said to be direct and positive. When he testifies to facts and circumstances having only an indirect relation to the facts constituting the crime, the evidence is presumptive and circumstantial. The commission of a crime may be proven either by the direct testimony of eye witnesses, or by circumstantial evidence; but when circumstantial evidence is relied on for a conviction, the circumstances should be consistent with each other. They must all be consistent with the defendants' guilt; and they must be inconsistent with any reasonable theory of the defendants' innocence. Evidence purely circumstantial in character which does not exclude every reasonable and rational theory of the defendants' innocence can not, as a matter of law, be convincing beyond a reasonable doubt."

Sixteenth: The court erred in refusing to give the twenty-fifth requested instruction, which is as follows, to-wit:

"I instruct you that when you retire to consider your verdict in this case you must consider separately the question whether each defendant is guilty or innocent, and if you have a reasonable doubt about the guilt or innocence of any defendant, it will be your duty to find such defendant not guilty."

Seventeenth: The court erred in refusing to give the twenty-seventh requested instruction, which is as follows, to-wit:

"You will disregard entirely the fact that the defendants have made a motion for a directed verdict in their favor. In ruling upon this motion the court has not even considered whether the defendants, or any of them, were guilty or innocent. Again, I want to caution you that the court has no view upon this question and has not expressed any view in passing upon this motion. It is the court's province to pass upon, and instruct you regarding, the law of the case; and it is your province to decide the facts."

Eighteenth: The court erred in refusing to give the twenty-eighth requested instruction, which is as follows, to-wit:

"In arriving at your verdict, you should consider separately the question of the guilt or innocence of each of the defendants charged; and if you have a reasonable doubt as to the guilt of one of the defendants, it is your duty to return a ver-

"I instruct you that in a criminal action you can not base conviction upon mere probabilities, but before you can find any defendant guilty you must be satisfied of guilt beyond all reasonable doubt."

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Seventeenth: The court erred in refusing to give the twenty-seventh requested instruction, which is as follows, to-wit:

"You will disregard entirely the fact that the defendants have made a motion for a directed verdict in their favor. In ruling upon this motion the court has not even considered whether the defendants, or any of them, were guilty or innocent. Again, I want to caution you that the court has no view upon this question and has not expressed any view in passing upon this motion. It is the court's province to pass upon, and instruct you regarding, the law of the case; and it is your province to decide the facts."

Eighteenth: The court erred in refusing to give the twenty-eighth requested instruction, which is as follows, to-wit:

"In arriving at your verdict, you should consider separately the question of the guilt or innocence of each of the defendants charged; and if you have a reasonable doubt as to the guilt of one of the defendants, it is your duty to return a ver-

dict of not guilty as to such defendant."

All of which foregoing instructions were applicable to the present case against plaintiffs in error, which were considered by the court as offered, refused, denied and exceptions in favor of plaintiffs in error preserved and noted; and the court erred in not giving the said proposed and requested instructions in this said cause.

X.

The court erred in charging the jury that the indictment stated an offense against the United States, although charging the same by using two separate counts in the indictment.

XI.

The court erred in instructing the jury as follows:

"At this time the law provided for distinct military and naval forces: First, the regular standing army and the military forces, and, Second, the male citizens of the United States between eighteen and forty-five years of age, classified into the National Guard and Naval Militia and Unorganized Militia, and further provided for the drafting of a sufficient number of the unorganized militia into the service of the United States where there were not enough voluntary enlistments to keep the reserve battalions at the prescribed strength,"—for the reason that notwithstanding the President had the power to call the regular militia into service, the law at that

time did not permit a person to be drafted into the military service of the country against his wishes and against his volition in the premises. So that as applied to the case at bar and the conduct of the defendants as disclosed in the Bill of Exceptions the instruction was misleading, confusing and erroneous. The refusal of the court to give defendants' requested instructions, Nos. 11, 12, 15 and 16, which would have instructed the jury upon the true condition of the law at that time and the obligation that a male citizen of the United States owed to the Government in military matters, together with the instruction actually given by the court, clearly shows how misleading and erroneous the instruction was.

XII.

The court erred in instructing the jury as follows:

"This conspiracy, if any was formed, can not be brought forward and made to offend against the Conscription Act of May 18, 1917. The issue is whether the defendants did conspire to oppose by force and to prevent, hinder and delay the President of the United States in carrying out this resolution of Congress under the law as it existed at the time charged in this indictment and prior to the 18th day of May, 1917; and in considering this you will take into consideration all of the evidence which has been offered and admitted and if you are convinced beyond a reasonable doubt that the object

and purpose of defendants was by force to prevent, hinder and delay the President in employing the entire Navy and Military forces of the United States in the prosecution of the war against the Imperial German Government as charged, then the defendants who participated in such conspiracy would be guilty and in this connection you will have in mind the power and authority to secure enlistments from the unorganized militia and the power to draft into the service of the United States from the unorganized militia a sufficient part to maintain the battalions at the proper strength,"—for the reason that the evidence as a whole showed a purpose in the use of the circular (Plaintiff's Exhibit VI) to resist involuntary conscription or draft. The United States at that time did not have the power to compel any male citizen of the United States to serve in the United States Army. The evidence discloses no such purpose and the instruction misstates the law and does not apply to the facts disclosed in the case at bar for this reason,—it was erroneous, misleading and prejudicial to the defendants, when considered with the refused instructions, Nos. 11, 12, 15 and 16.

XIII.

The court erred in charging the jury, to-wit:

"If you believe or if you have any reasonable doubt as to whether the 'No-Conscription' circular, set out in the indictment and admitted in evidence,

did not purpose to oppose by force or incite others to oppose by force and hinder and delay the President in the execution of the joint resolution of Congress, then, of course, you will not consider it in that connection. But if you believe beyond a reasonable doubt that the purpose and effect of the circular was to incite others by force to oppose, hinder and delay the execution of such resolution, then such defendants who entered into such conspiracy would be guilty. In this connection I think I should say that the defendants are presumed to know the law and can not shield themselves behind ignorance of the law. The law requires that all persons know what the law is; you are also instructed that every person is presumed to intend the natural consequences or results of his acts deliberately or knowingly done."

This instruction was excepted to specifically at the close of the case in the presence of the jury for the reason that there the acts committed were not in themselves felonious, so as to involve a felonious purpose or intent as a matter of law in the commission of the act. The instruction is erroneous and prejudicial. The publication of a circular intending to incite persons to resist a conscription act, which had not been passed, could not in any sense be construed as so inherently felonious as to commit the defendants to a felonious purpose per se in the publication of the circular nor in the criminal

law is every person as a matter of law presumed to know the law to such a degree as to impose upon him a felonious purpose when, in fact, he might have been ignorant of the law and had no such purpose. The instruction in the language given was highly prejudicial in view of the facts disclosed in the record. Exceptions were duly taken to the said portion of the court's instructions.

XIV.

The court erred in instructing the jury, to-wit:

"Force need not be actual physical force manifested by the defendants, but must be such conduct, either acts, statements, invitations or solicitations, the evident purpose of which is to incite others to the use of forcible resistance in hindering or delaying the Government of the United States in the execution of its laws. It is not essential that the object of the conspiracy should actually have been used. Nor is it essential that the conspirators should have agreed upon the precise method of employing force or the weapons or instruments of such force. If a conspiracy was formed and the use of force was the natural or necessary means of accomplishing the object of the conspiracy, and if its use was necessarily incident to the carrying out of the plan of the conspiracy, whether that force should be used by the defendants or only by those persons who should be induced to co-operate with them, then the defendants would be guilty of the

offense charged. Nor can the effect of the circular be neutralized or limited by any motive or purpose or intent not communicated with the circular. Nor could what Webster or anyone else said enter into this issue or limit the effect of the circular, if the natural and reasonable conclusion to be deduced from the circular in evidence and what was done with it was to incite by force opposition to the law of the United States as charged,"—for the reason that the indictment charged that the purpose and object of the conspiracy was to conspire by force to hinder, delay or prevent the execution of existing laws of the United States. The element of force must have been the chief ingredient of the conspiracy; they must have planned to use force to prevent the execution of a law, and contemplated the use of actual physical force by the conspirators, which should relate to a then existing law, and a statement that "nor can the effect of the circular be neutralized or limited by any motive or purpose or intent not communicated with the circular," eliminates from the jurors' minds all of the other testimony, explaining the use of the circular, the purpose the defnedants had in mind, the purpose of the meeting and the purpose they sought to accomplish. The instruction as given was therefore involved, erroneous, and highly prejudicial. Exceptions were taken in the presence of the jury to this portion of the charge.

XV.

The defendants excepted to the instruction relating to the freedom of speech, viz:

"In this connection * * * the defendants had the right of freedom of speech and lawful assemblage and to petition Congress or to do anything to alleviate any grievances, so long as they did not advocate or advise or encourage the use of force in opposing, hindering or delaying the execution of the law of the United States as charged in the indictment. The defendant, Wells, had a right to address Dr. Strong's church, as testified to by one of the witnesses. He had a right to do or say anything in advocating the repeal of the law or its advocating the repeal of the law or its amendment, to write to Congressmen and to induce others to write to Congressmen, so long as he acted within the provisions of the law. But in this indictment he is charged with acting without the provisions of the law, and that is the issue which is now before you. All citizens are free to express their views on all public questions so long as they are actuated by honest purposes and not for the purpose of transgressing the rights of others, the laws of the state, or obstructing by force the execution of the laws of the United States; but no person has a right to convert the liberty of speech into a license or to carry it to a point where it interferes with the due execution of the law, where his opposition is not honest,

and where he is not actuated by an intention of expressing his views, but is manifested by an intent to violate the rights of others or the laws of the United States. A person may say or do anything not in itself unlawful to prevent the passage of a law or to secure the repeal of one already passed, but after a law is passed it is every man's duty to conform his acts in accordance with the provisions of the law, and he may not for the purpose of creating sentiment against the wisdom of the law do anything with intent to procure the violation of the law by force in his advocacy of its unwisdom or for the purpose of repeal.

"The law with relation to the freedom of speech was recently commented upon by another Judge (Judge Wolverton), which I fully approve. In referring to the constitution, he says:

> " 'That instrument does declare the Congress shall make no law abridging the freedom of speech. The guarantee is a blessing to the people of this Government, and great latitude is preserved to them in the exercise of that right. But a citizen may not use his tongue or his pen in such a way as to inflict legal injury upon his neighbor or another. Nor has any person the right, under the guarantee of freedom of speech, to shape his language in such a way as to incite discord, riot, or rebellion, because such action leads to a breach of the peace,

and disturbs good order and quietude in the community. Nor is he privileged to utter such language and sentiment as will lead to an infraction of law, for the laws of the land are designated to be observed, and not to be disregarded and overridden. Much less has he the privilege, no matter upon what claim or pretense, so to express himself, with willful purpose, as to lead to the obstruction and resistance of the due execution of the laws of the country, or as will induce others to do so. A citizen is entitled to fairly criticise men and measures; that is men in public office, whether of high or low degree, and laws and ordinances intended for the government of the people; even the constitution of his state or of the United States; this with a view, by the use of lawful means, to improve the public service, or to amend the laws by which he is governed, or to which he is subjected. But when his criticism extends, or leads by willful intent, to the incitement of disorder and riot, or to the infraction of the laws of the land or to the constitution of this country, or with willful purpose, to resistance and obstruction of the due execution of the laws by the proper authorities, it overleaps the bounds of all reasonable liberty accorded to him by the guarantee of the freedom of speech, and this because the very means adopted is an

unlawful exercise of his privilege,' "

for the reason that in Judge Wolverton's speech there is a reference to any person who incites or shapes his language in such a way as to incite discord, riot, or rebellion, because such language leads to a breach of the peace, or leads by willful intent to the incitement of disorder and riots, or to the infraction of the laws of the land, for the reason that the language used in this instruction was highly prejudicial and erroneous. The mere fact that the language used in the circular might incite to riot and disorder or breach of the peace would not necessarily render the defendants guilty if it was not the purpose of the conspiracy which they had formed. This language unduly emphasizes the effect upon the public mind which might follow the reading of the circular when taken in conjunction with the previous instruction to the jury that the circular must speak for itself upon the question of intent and no other evidence should be taken into consideration to minimize or detract from the language of the circular itself. This instruction was error and was not corrected by the additional comment to the jury after counsel had noted an exception, which comment is found on page 89 of the Bill of Exceptions between lines five and thirteen.

XVI.

The instructions as a whole were erroneous and highly prejudicial in that the jury was not per-

mitted to take into consideration the honest purpose or intent which the defendants claimed to have in holding the meeting and publishing the circular. The instruction, as a whole, would lead the jury to believe that actual force need not have been contemplated by the conspirators and that any immoderate or vile language, tending to creat riot and disorder, if such was the natural effect of the circular, was sufficient to establish the guilt of the defendants without regard to the purpose of the publication or the object of holding the meeting or any of the facts and circumstances given by the defendants in explanation of their conduct. Exception thereto was noted. For these reasons the jury could not fairly and impartially consider the facts presented to them in determining the guilt of the defendants. The instructions were therefore erroneous and prejudicial.

XVII.

All and singular the court erred in the instructions which he gave when the same are considered with the instructions in cause No. 3671, hereinbefore set forth, which were requested, offered and denied, preserving exceptions to plaintiffs in error for the reason that the legal rights of the defendants were not clearly and adequately given to the jury. The instructions, as a whole, which were given failed to substantially and accurately instruct the jury upon the law of the case and said refusal to instruct, to-

gether with the instructions which were given constitute prejudicial error in said cause.

WILSON R. GAY,
WINTER S. MARTIN,
Attorneys for Defendants.

Indorsed: Assignment of Errors. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 28, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3797.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HULET M. WELLS, et al.,
Defendant.

Bond.

KNOW ALL MEN BY THESE PRESENTS:

That we, Hulet M. Wells, as principal, and Hiram E. Wells and Alfreda E. Wells, his wife, and Sydney Strong and C. W. Doyle and Maudie C. Doyle, as sureties, are held and firmly bound unto the United States of America, plaintiff in the above entitled action in the penal sum of $5000.00 lawful money of the United States for the payment of which well and truly to be made we bind ourselves, and each of our heirs, executors and ad-

ministrators, jointly and severally firmly by these presents:

THE CONDITION of this obligation is such that

WHEREAS, The above named defendant, Hulet M. Wells was on the 8th day of March, 1918, sentenced in the above entitled case as follows: To serve a term of two years in the Federal penitentiary at McNeils Island in the State of Washington, and

WHEREAS, The said defendant has appealed from said sentence and judgment to the Circuit Court of Appeals of the United States for the Ninth Circuit, and

WHEREAS, The above entitled court has fixed the defendant's bond to stay execution of said judgment in the sum of $5000.00,

NOW, THEREFORE, If the said defendant, Hulet M. Wells, shall diligently prosecute his said appeal and shall obey and abide by and render himself ameanable to all orders which said appellate court shall make, or order to be made, in the premises, and shall render himself ameanable and obey all process issued or ordered to be issued by said Appellate Court herein; and shall perform any judgment made or entered herein by said Appellate Court, and shall not leave the jurisdiction of this court without leave being first had and shall obey and abide by and render himself ameanable to any

and all orders made or rendered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself and ameanable, and obey all and any orders issued by said District Court surrender himself, and will obey and perform any judgment entered herein by the said Circuit Court of Appeals, or the said District Court, then this obligation to be void, otherwise to remain in full force and effect.

SEALED with our seals and dated this 18th day of March, 1918.

HULET M. WELLS, (Seal)
Principal.

HIRAM E. WELLS, (Seal)
ALFREDA L. WELLS, (Seal)
Sureties.

SYDNEY STRONG, (Seal)
Surety.

C. W. DOYLE, (Seal)
Surety.

MAUDIE A. DOYLE, (Seal)
Surety.

State of Washington,
County of King.—ss.

C. W. Doyle and Maudie C. Doyle, Hiram E. Wells and Alfreda L. Wells and Sydney Strong being first duly sworn on oath deposes and says, each for himself: That he is a resident of the State of Washington, and is worth the full sum of $5000. in property situated within said State over and above all just debts and liabilities and not exempt

from execution, and that he is not an attorney at law or other officer of the above entitled court.

C. W. DOYLE. (Seal)
MAUDIE C. DOYLE. (Seal)
HIRAM E. WELLS. (Seal)
ALFREDA L. WELLS. (Seal)
SYDNEY STRONG. (Seal)

Subscribed and sworn to before me this 18th day of March, A. D. 1918.

DONALD A. McDONALD,
Notary Public in and for the State of Washington, residing at Seattle.

O. K.—This March 19, 1918.

BEN L. MOORE,
Assistant U. S. Attorney.

The foregoing bond is hereby approved this 19th day of March, 1918, and the Marshal of this court is hereby ordered to release the defendant, Hulet M. Wells from custody pending the termination of his appeal and fulfillment of the conditions of the foregoing bond.

JEREMIAH NETERER,
Judge.

Endorsed: Bond. Filed in the United States District Court, Western District of Washington, Northern Division, March 19, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy Clerk.

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, et al.,

Defendants.

Bond.

KNOW ALL MEN BY THESE PRESENTS:

That we, Sam Sadler as principal, and Emma S. Parks, Rebecca Snellenberg and Clarence E. Kingery as sureties, are held and firmly bound unto the United States of America, plaintiff, in the above entitled action, in the penal sum of $5000.00 lawful money of the United States for the payment of which well and truly to be made we bind ourselves, and each of our heirs, executors and administrators, jointly and severally firmly by these presents.

THE CONDITION of this obligation is such that

WHEREAS, The above named defendant, Sam Sadler, was on the 18th day of March, 1918, sentenced in the above entitled cause as follows: To serve two years in the U. S. Penitentiary at McNeils Island, said sentence being upon a verdict of guilty of violation of Sec. 6, U. S. Penal Code, and

WHEREAS, The said defendant has appealed from said sentence and judgment to the Circuit

Court of Appeals of the United States for the Ninth Circuit, and

WHEREAS, The above entitled court has fixed the defendant's bond to stay execution of said judgment in the sum of $5000.00.

NOW, THEREFORE, The said defendant, Sam Sadler, shall diligently prosecute his said appeal and shall obey and abide by and render himself amenable to all orders which said appellate court shall make, or order to be made, in the premises, and shall render himself amenable and obey all process issued or ordered to be issued by said Appellate Court herein; and shall perform any judgment made or entered herein by said Appellate Court, and shall not leave the jurisdiction of this court without leave being first had and shall obey and abide by and render himself amenable to any and all orders made or rendered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable, and obey all and any orders issued by said District Court and shall pursuant to any order issued by said District Court surrender himself, and will obey and perform any judgment entered herein by the said Circuit Court of Appeals, or the said District Court then this obligation to be void, otherwise to remain in full force and effect.

SEALED with our seals and dated this 22nd

day of March, 1918.

SAM SADLER, (Seal)
Principal.

EMMA S. PARKS, (Seal)
MRS. REBECCA SNELLENBERG, (Seal)
Sureties.

CLARENCE E. KINGERY, (Seal)
Surety.

State of Washington,
County of King.—ss.

Emma S. Parks and Mrs. Rebecca Snellenberg, and Clarence E. Kingery being first duly sworn on oath depose and say, each for himself, that he is a resident of the State of Washington, and is worth the full sum of $5000.00 in property situated within said State over and above all just debts and liabilities and not exempt from execution, and that he is not an attorney at law or other officer of the above entitled court.

EMMA S. PARKS. (Seal)
MRS. REBECCA SNELLENBERG. (Seal)
CLARENCE E. KINGERY. (Seal)

Subscribed and sworn to before me this 23rd day of March, 1918.

SAMUEL E. LEITCH,
Deputy Clerk U. S. District Court,
Western District of Washington.

The foregoing bond together with deposits of $1775.00 each is hereby approved this 25th day of March, 1918, and the Marshal of this court is hereby

ordered to release the defendant Sam Sadler from custody pending the termination of his appeal and fulfillment of the conditions of the foregoing bond.

JEREMIAH NETERER,
Judge.

O. K.—In conjunction with deposit of Seventeen Hundred and Seventy-five Dollars cash, ($1775.00) with Clerk of the Court. This March 23rd, 1918.

BEN L. MOORE,
Assistant U. S. Attorney.

United States District Court, Western District of Washington, Northern Division.

No. 3797.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
HULET M. WELLS, et al.,
Defendants.

Bond.

KNOW ALL MEN BY THESE PRESENTS:

That we, Morris Pass as principal, and Ernest A. Fabi and Jennie Fabi and S. H. Weber and Leander A. Vaughan, a widower, as sureties, are held and firmly bound unto the United States of America, plaintiff in the above entitled action, in the penal sum of $5000.00, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, and each of our heirs, executors and administrators, jointly and

severally firmly by these presents;

The conditions of this obligation is such that

Whereas the above named defendant, Morris Pass, was on the 18th day of March, 1918, sentenced in the above entitled case as follows, to-wit: To serve two years in the Federal Penitentiary at McNeils Island, sentence being upon a verdict of guilty of violation of Section 6, Penal Code, and

Whereas the said defendant has appealed from said sentence and judgment to the Circuit Court of Appeals of the United States for the Ninth Circuit, and

Whereas the above entitled Court has fixed the defendant's bond to stay execution of said judgment in the sum of $5000.00;

Now therefore, the said defendant Morris Pass shall diligently prosecute his said appeal and shall obey and abide by and render himself amenable to all orders which said Appellate Court shall make, or other to be made, in the premises, and shall render himself amenable and obey all process issued or ordered to be issued by said Appellate Court herein; and shall perform any judgment made or entered herein by said Appellate Court, and shall not leave the jurisdiction of this Court without leave being first had and shall obey and abide by and render himself amenable to any and all orders made or rendered by the District Court of the United States for the Western District of Washington, Northern

Division, and will render himself amenable, and obey all and any orders issued by said District Court and shall pursuant to any order issued by said District Court surrender himself, and will obey and perform any judgment entered herein by the said Circuit Court of Appeals, or the said District Court, then this obligation to be void, otherwise to remain in full force and effect.

Sealed with our seals and dated this........day of March, 1918.

MORRIS PASS, (Seal)
Principal.
ERNEST A. FABI, (Seal)
JENNY FABI, (Seal)
S. H. WEBER, (Seal)
L. A. VAUGHAN, (Seal)
Sureties.

State of Washington,
County of King.—ss.

Ernest A. Fabi and Elizabeth Fabi and L. A. Vaughn and S. H. Weber, being first duly sworn on oath deposes and says, each for himself; that he is a resident of the State of Washington, and is worth the full sum of $5000.00 in property situated within said State over and above all just debts and liabilities and not exempt from execution, and that he is not an attorney at law or other officer of the above entitled Court.

ERNEST A. FABI.
JENNIE FABI.

S. H. WEBER.

L. A. VAUGHAN.

Subscribed and sworn to before me this 20th day of March, 1918.

(Seal) ED M. LAKIN,

Deputy Clerk U. S. District Court,

Western District of Washington.

The foregoing bond is hereby approved on condition that $2500.00 deposited in cause U. S. vs. Pass be also held in this case as additional security, this 20th day of March, 1918, and the Marshal of this Court is hereby ordered to release the defendant, Morris Pass, from custody pending the termination of his appeal and fulfillment of the conditions of the foregoing bond.

JEREMIAH NETERER,

Judge.

Approved in conjunction with cash deposit of $2500.00 already deposited in other case and to be held in this as well, this 20th day of December, 1917.

DONALD A. McDONALD,

Asst. U. S. Atty.

Indorsed: Bond. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 20, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

United States District Court, Western District of Washington, Northern Division.

No. 3797.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HULET M. WELLS, et al.,
Defendants.

Bond.

KNOW ALL MEN BY THESE PRESENTS:

That we, Joe Pass, as principal, and Louis Stettler, a bachelor, and James Simpson and Elizabeth Simpson, as sureties, are held and firmly bound unto the United States of America, plaintiff in the above entitled action in the penal sum of $5000.00, lawful money of the United States for the payment of which well and truly to be made we bind ourselves, and each of our heirs, executors and administrators, jointly and severally firmly by these presents;

The condition of this obligation is such that

Whereas the above named defendant, Joe Pass, was on the 18th day of March, 1918, sentenced in the above entitled case as follows: To serve two years in the Federal Penitentiary at McNeil Island, said sentence being upon a verdict of guilty of violation of Sec. 6, U. S. Penal Code; and

Whereas the said defendant has appealed from said sentence and judgment to the Circuit Court of Appeals of the United States for the Ninth Circuit; and

Whereas the above entitled Court has fixed the defendant's bond to stay execution of said judgment in the sum of $5000.00;

Now therefore, if the said Defendant Joe Pass shall diligently prosecute his said appeal and shall obey and abide by and render himself amenable to all orders which said Appellate Court shall make, or order to be made, in the premises, and shall render himself amenable and obey all process issued or ordered to be issued by said Appellate Court herein; and shall perform any judgment made or entered herein by said Appellate Court, and shall not leave the jurisdiction of this Court without leave being first had and shall obey and abide by and render himself amenable to any and all orders made or rendered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable, and obey all and any orders issued by said District Court, and shall pursuant to any order issued by said District Court surrender himself, and will obey and perform any judgment entered herein by the said Circuit Court of Appeals, or the said District Court, then this obligation to be void, otherwise to remain in full force and effect.

Sealed with our seals and dated this........day of March, 1918.

JOE PASS, (Seal)
Principal.

LOUIS STETTLER, (Seal)
JAMES SIMPSON, (Seal)
ELIZABETH SIMPSON, (Seal)
Sureties.

State of Washington,
County of King.—ss.

Louis Stettler, James Simpson and Elizabeth Simpson being first duly sworn on oath deposes and says, each for himself, that he is a resident of the State of Washington, and is worth the full sum of $5000.00 in property situated within said State over and above all just debts and liabilities and not exempt from execution, and that he is not an attorney at law or other officer of the above entitled court.

LOUIS STETTLER.
JAMES SIMPSON.
ELIZABETH SIMPSON.

Subscribed and sworn to before me this 19th day of March, A. D. 1918.

(Seal) ED M. LAKIN,
Deputy Clerk U. S. District Court,
Western District of Washington.

O. K.—This March 19, 1918.

BEN L. MOORE,
Assistant U. S. Atty.

The foregoing bond is hereby approved this 19th day of March, 1918, and the Marshal of this Court is hereby ordered to release the defendant, Joe Pass, from custody pending the termination of

his appeal and fulfillment of the conditions of the foregoing bond.

JEREMIAH NETERER,
Judge.

Indorsed: Bond. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, Mar. 19, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

United States District Court, Western District of Washington, Northern Division.

AT LAW.

No. 3797.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HULET M. WELLS, SAM SADLER,
MORRIS PASS and JOE PASS,
Defendants.

Order Allowing Writ of Error.

Now, on this 28th day of June, 1918, came the defendants and filed herein and presented to the Court their petition praying for the allowance of a Writ of Error intended to be urged by them, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises.

Now, therefore, upon consideration of said petition and being fully advised in the premises, the Court does hereby allow the said Writ of Error.

And it is hereby ordered that a supersedeas and bail bond for this appeal and writ having been filed, all proceedings in this cause toward the execution of said judgment are hereby stayed until the determination of said Writ of Error by the said United States Circuit Court of Appeals.

And it is further ordered that the defendants shall be released from custody pending the hearing and determination of said Writ of Error.

JEREMIAH NETERER,

Judge.

Service of the within Order by delivery of a copy to the undersigned is hereby acknowledged this 28th day of June, 1918.

BEN L. MOORE,

Assistant Attorney for the United States.

Indorsed: Order Allowing Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 28, 1918. Frank L. Crosby, Clerk. Ed M. Lakin, Deputy.

United States District Court, Western District of Washington, Northern Division.

AT LAW.

No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, SAM SADLER, MORRIS PASS and JOE PASS,

Defendants.

Order Directing Transmission of Original Exhibits to Appellant Court.

Upon stipulation of the plaintiff and defendants in the above-entitled cause, it is hereby ordered that the clerk of this court transmit to the United States Circuit Court of Appeals for the Ninth Circuit, as part of the record herein, all the exhibits introduced in evidence at the trial hereof in lieu of printed copies thereof.

Done in open court this 28th day of June, 1918.

JEREMIAH NETERER,

Judge.

O. K.—This June 28, 1918.

BEN L. MOORE, Asst. U. S. Atty.

Indorsed: Order Directing Transmission of Original Exhibits to Appellant Court. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 28, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

United States District Court, Western District of Washington, Northern Division.

AT LAW.

No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, SAM SADLER, MORRIS PASS and JOE PASS,

Defendants.

Stipulation as to Record.

It is hereby stipulated that the following designated papers comprise all the papers, exhibits and other proceedings which are necessary to the hearing of this cause upon writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, and that none but such papers need be included in the records of said court:

Indictment.

Arraignment and Plea, each defendant.

Empaneling of Jury.

Verdict.

Judgment and Sentence, each defendant.

Order of May 6, 1918, extending November Term, 1917, to settle Bill of Exceptions and extending time to settle same under the rules of District Court.

Order of June 3d extending time to June 17th to settle Bill of Exceptions and extending Novem-

ber Term, 1917, for said purposes.

Journal entry June 14th extending term and time from 17th of June to 24th, inclusive.

Bill of Exceptions.

Proposed Amendments to Bill of Exceptions.

Order Settling Bill of Exceptions.

Petition for Writ of Error.

Assignment of Errors.

Supersedeas Bond, each defendant.

Order Allowing Writ of Error.

Order as to Exhibits.

Stipulation as to Record.

Writ of Error.

Citation.

That the original exhibits herein may be attached to the record by the clerk and transmitted to the Circuit Court of Appeals and same need not be printed.

BEN L. MOORE,
Assistant United States Attorney.
WILSON R. GAY,
WINTER S. MARTIN,
Attorneys for Defendants.

Indorsed: Stipulation as to Record. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, July 1, 1918. F. M. Harshberger, Clerk. By Ed M. Lakin, Deputy.

United States District Court, Western District of Washington, Northern Division.

No. 3797.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HULET M. WELLS, et al.,

Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington.—ss.

I, F. M. Harshberger, Clerk of the United States District Court, for the Western District of Washington, do hereby certify this printed record, numbered from 1 to 223, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as are necessary to the hearing of said cause on Writ of Error therein in the United States Circuit Court of Appeals for the Ninth Circuit, and as is called for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitutes the record on return to said Writ of Error herein from the judgment of said United States District court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the Plaintiff in Error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to-wit:

Clerk's fee (Sec. 828 R. S. U. S.) for making record, certificate or return, 484 folios at 15c	$72.60
Certificate of Clerk to transcript of record—4 folios at 15c	.60
Seal to said Certificate	.20
Certificate of Clerk to original Exhibits—3 folios at 15c	.45
Seal to said Certificate	.20
Statement of cost of printing said transcript of record, collected and paid	175.00
Total	$249.05

I hereby certify that the above cost for preparing and certifying record, amounting to $249.05, has been paid to me by Plaintiff in Error.

I further certify that I hereto attach and herewith transmit the original Writ of Error and original Citation issued in this cause.

IN WITNESS WHEREOF, I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 22nd day of July, 1918.

(Seal) F. M. HARSHBERGER,

Clerk.

The United States of America.

In the United States Circuit Court of Appeals for the Ninth Circuit.

AT LAW.

No. 3797.

HULET M. WELLS, SAM SADLER,
MORRIS PASS and JOE PASS,

Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Writ of Error.

United States of America,
Ninth Judicial Court.—ss.

The President of the United States of America:

To the Honorable Judge of the District Court of the United States for the Western District of Washington:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said District Court before you, between the United States of America, as plaintiff, and Hulet M. Wells, Sam Sadler, Morris Pass and Joe Pass, as defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the party aforesaid in this behalf, do command you, if judgment be therein

given, that they under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 27th day of July, 1918, next, in the said Circuit Court of Appeals to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS: The Honorable EDWARD D. WHITE, Chief Justice of the United States of America, this 28th day of June, 1918.

(Seal) FRANK L. CROSBY,

Clerk of the United States District Court
for the Western District of Washington.

Allowed this 28th day of June, 1918, after plaintiffs in error had filed with the clerk of this court with their petition for a writ of error their assignment of errors.

JEREMIAH NETERER,

Judge of the District Court of the United States
for the Western District of Washington.

Service of the within Writ by delivery of a copy to the undersigned is hereby acknowledged this 28th day of June, 1918.

BEN L. MOORE,
Assistant Attorney for the United States.

Indorsed: Writ of Error. Filed in the U. S. District Court, Western District of Washington, Northern Division, June 28, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.

The United States of America.
In the United States Circuit Court of Appeals for the Ninth Circuit.

AT LAW.

No. 3797.

HULET M. WELLS, SAM SADLER,
MORRIS PASS and JOE PASS,
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vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Citation on Writ of Error.

United States of America,
Ninth Judicial Court.—ss.

To the UNITED STATES OF AMERICA,
Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden

at the city of San Francisco, State of California, on the 27th day of July, 1918, next, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Western District of Washington, Northern Division, wherein Hulet M. Wells, Sam Sadler, Morris Pass and Joe Pass, are plaintiffs in error, and the United States of America is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

WITNESS, the Honorable JEREMIAH NETERER, Judge of the United States District Court for the Western District of Washington, this 28th day of June, 1918.

(Seal) JEREMIAH NETERER,

Judge.

Service of the foregoing citation and receipt of a copy thereof is hereby admitted this 28th day of June, 1918.

BEN L. MOORE,

Assistant United States Attorney.

Indorsed: Citation on Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division, June 28, 1918. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy.